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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-5519

CARL WHITE,
Petitioner,

vs.

CLOVIS CARL GREEN, JR.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Carl White, Superintendent of the Missouri Training Center for Men at Moberly, Missouri, petitioner herein, by Attorney General John Ashcroft, State of Missouri, respectfully requests that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on July 13, 1979; both parties' motions for rehearing were denied on September 19, 1979.

REPORTS OF OPINIONS BELOW

On July 13, 1979, the United States Court of Appeals for the Eighth Circuit issued an Opinion affirming in part and reversing in part the District Court's "Order and Memorandum" which dismissed Mr. Green's § 1983 class action lawsuit because frivolous. 28 U.S.C. § 1915(d).

Both parties filed motions for rehearing and rehearing en banc which the Eighth Circuit denied on September 19, 1979. To the best of Mr. White's knowledge neither the July Opinion nor the September denials have been published. Reproduction of the Opinion and denials will be found in Appendix A.[1]

The Order and Memorandum of the United States District Court for the Eastern District of Missouri, Eastern Division, per the Honorable John F. Nangle, issued on October 26, 1978, dismissing Mr. Green's § 1983 lawsuit because frivolous within the meaning of 28 U.S.C. § 1915(d), is to the best of Mr. White's knowledge not published and will be found in Appendix B. It is this Order from which Mr. Green took an appeal to the Eighth Circuit whose Opinion, in turn, is sought to be reviewed and reversed, in part.

JURISDICTIONAL STATEMENT

Title 28 U.S.C. § 1254(1) states that cases in the courts of appeals may be reviewed by this Court

> By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .

Title 28 U.S.C. § 2101(c) states that

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. . . .

1. On October 29, 1979, counsel for Mr. White mailed a letter to the Clerk of the Eighth Circuit requesting that he certify and transmit to this Court the entire record in this case. On October 30, 1979, the Eighth Circuit Clerk refused the request stating that this Court had instructed him not to forward "transcripts of the proceedings" unless requested. Only those documents deemed particularly important will be included in this Petition.

This case involves Mr. Green's claim that while incarcerated at the Moberly prison for approximately six weeks in 1976 he was denied his federal constitutional right to practice his so-called religion. District Court Judge Nangle dismissed the complaint upon concluding that it was frivolous within the meaning of 28 U.S.C. § 1915(d). On appeal the Eighth Circuit affirmed in part and reversed in part after determining that certain claims made by Mr. Green did state a cause of action and ordered an evidentary hearing in regard to them. This Opinion was issued on July 13, 1979; the court denied both parties' motions for rehearing and rehearing en banc on September 19, 1979. The Eighth Circuit's decision is properly sought to be reviewed by a request of certiorari to that Court and is made well within ninety days from September 19, 1979. Consequently, no extension of time in which to file this Petition has been sought.

QUESTIONS PRESENTED FOR REVIEW

On October 24, 1978, Mr. Green, a caucasian male, filed a "Civil Rights Complaint as a Class Action" in the United States District Court for the Eastern District of Missouri (See, Appendix C). The suit was brought under the aegis of 42 U.S.C. § 1983. In his complaint Mr. Green asseverated that he was "a minister of God with the HUMAN AWARENESS UNIVERSAL LIFE CHURCH. . . ." Mr. Green further claimed that he was incarcerated at the Moberly prison, under the custody of Mr. White, in 1976 and during that period of time there were many inmates who were members of Mr. Green's so-called church but who were not allowed to practice the tenets of the so-called religion. Mr. Green claimed that Mr. White's refusal to allow members

of the so-called church to practice certain claimed rituals was sought to be redressed, on a class action basis, because a violation of those inmates' federal constitutional rights. As relief Mr. Green requested that the suit be allowed to proceed as a class action, that the "Human Awareness Universal Life Church" be deemed a legitimate religion and that, *inter alia*, Mr. White "pay money damages of $1,000,000.00 (one million dollars) to [Mr. Green] for the violation of his freedom of religion."

On October 26, 1978, Judge Nangle, without any notice to Mr. White, dismissed the lawsuit because frivolous. 28 U.S.C. § 1915(d). On appeal the Eighth Circuit affirmed in part and reversed in part. In that Opinion the Eighth Circuit concluded that Mr. Green could not maintain a class action because he was not a member of the class, but that the Complaint contained individual claims relating to Mr. Green which were not barred by the doctrine of *res judicata* and remanded the case for "an evidentary hearing" in which inquiry was to be

> . . . strictly limited to whether defendant White, during the brief period in 1976 that Green was incarcerated at Moberly prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church and, if so, whether Green's civil rights were thereby violated.

Based upon these facts the following questions emerge:

1. Has Mr. Green presented individual claims in his Complaint or is the lawsuit exclusively a class action which Mr. Green may not bring as a representative party because he is not a member of the class he himself has defined?

2. Assuming, *ad arguendo*, that the Complaint contains individual claims which Mr. Green may litigate, is he barred

from so doing by *res judicata*? Stated more specifically, is this lawsuit the product of conscious piecemeal litigation for the purpose of harassment as evidenced by the fact that Mr. Green has filed more than 500 lawsuits since his incarceration in the Missouri penal system in 1975?

3. Is the Eighth Circuit's Order mandating an *evidentiary hearing* concerning the issues raised by Mr. Green, which were found to state a cause of action, illegal because it denies Mr. White his Seventh Amendment right to a jury trial and further denies him the opportunity to raise additional affirmative defenses in the District Court?

CONSTITUTIONAL PROVISIONS

Title 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceeding for redress.

Seventh Amendment to the United States Constitution:

> In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment to the United States Constitution:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

> Section 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.
>
> Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

HISTORY OF THE CASE

On October 24, 1978, Mr. Green filed "a class action suit" under the aegis of 42 U.S.C. § 1983 against Mr. White seeking injunctive and declaratory relief and one million dollars in damages (Appendix C).

Mr. Green contended that while he was a prisoner at Moberly in 1976 the superintendent of that facility, Mr. White, refused to recognize the so-called Human Awareness Universal Life Church. Mr. Green posited, *inter alia,* that Carl White unconstitutionally failed to recognize this so-called church as a legitimate religion; that he refused to allow the inmate members of the so-called church to wear long hair and beards as an incident of the exercise of their alleged religion; additionally, it was contended that Mr. White illegally denied the members of the so-called church the right to distribute its so-called religious literature.

Among various requests for relief found in the Complaint is the following: "That this Court declare this suit is a class action suit on behalf of all church members now at the Moberly prison." (See, Appendix C at A12).

On October 26, 1978, Judge Nangle, on his own motion, dismissed the lawsuit. In his "Memorandum" Judge Nangle stated:

> This matter is before the Court upon the Court's own motion to consider whether this cause should be dismissed as frivolous. 28 U.S.C. § 1915(d).
>
> Plaintiff filed this suit prose on behalf of himself and other inmates of his church seeking $1,000,000.00 in damages. Plaintiff alleges that he is a minister with the Human Awareness Universal Life Church. In

1976, plaintiff was a prisoner at the Moberly prison where he was unable to exercise his religious beliefs. Plaintiff alleges that the church believes in long hair and beards, conjugal visits and banquets on religious holidays. Plaintiff alleges that defendant, Superintendent of the Missouri Training Center for Men at Moberly, Missouri, refused to appoint plaintiff as a full-time paid chaplain and refuses to allow plaintiff to return to the institution, upon release, at a full salary as minister of the church. Plaintiff alleges in addition that defendant has refused to allow distribution of the church's newspapers.

It is the Court's conclusion that his complaint is frivolous as a matter of law and must be dismissed. [Citations omitted].

On October 31, 1978, Mr. Green filed a "Notice of Appeal and Motion for Leave to Appeal In Forma Pauperis." On November 6, 1978, Judge Nangle denied ". . . plaintiff's Motion for Leave to Appeal In Forma Pauperis . . . the court being of the opinion that this cause is frivolous and that there is no meritorius issue for appeal." It appears that on November 9, 1978, Mr. Green filed a "Notice of Appeal" in the Eighth Circuit.

On October 18, 1978, the Eighth Circuit concluded that although some of Mr. Green's contentions were frivolous an evidentiary hearing was required in regard to ". . . whether the defendant's alleged denial of [Mr. Green's] right to wear long hair and beards [sic] as an incident of the exercise of his religion . . . and the defendant's alleged denial of [Mr. Green's] rights to distribute the religious literature of his church" amounted to a denial of *Mr. Green's* federal constitutional rights. The undersigned, as counsel for Mr. White, first became aware of this lawsuit when he received in the mail the just-mentioned Order. See,

Mr. White's "Petition for Rehearing, With Suggestion that the Case Be Reheard in Banc" filed in the Eighth Circuit on January 2, 1979.

In Mr. White's January Motion for Rehearing it was strenuously asserted that Judge Nangle correctly dismissed Mr. Green's § 1983 action because the latter was barred from b.inging it in the first instance since he was not a member of the class upon whose behalf he purported to institute the action and, in any event, the lawsuit was duplicative of other actions initiated by Mr. Green which were either settled with prejudice at the district court level or decided adversely to Mr. Green by the Eighth Circuit. In response to Mr. White's January Motion for Rehearing Mr. Green responded not by denying that the instant action was a "class action" but by stating that he was ". . . a member of the class of church members as the leader of the church members at Moberly."

On January 5, 1979, the Eighth Circuit issued an Order striking the last paragraph from its Order dated December 18, 1978, and declared that

> . . . the appeal may proceed limited to the two issues of [Mr. Green's] alleged denial of *his* rights to wear long hair and beards [sic] as an incident to the exercise of *his* religion, and [Mr. Green's] alleged denial of *his* right to distribute the religious literature of *his* church. [Emphasis added].

Also, on January 5, 1979, Mr. Green filed a "Motion for Rehearing En Banc" asserting that the Eighth Circuit erred in its ruling of December 18, 1978, because he was entitled to all relief requested.

On January 16, 1979, the Eighth Circuit specifically overruled all pending motions for rehearing filed by either

party. On January 19, 1979, Mr. Green was denied appointment of counsel.

After both parties filed briefs the Eighth Circuit issued an Opinion on July 13, 1979. In that Opinion it was determined that Mr. Green could not maintain the lawsuit "as a class action"; that Mr. Green was not barred by the doctrine of *res judicata* from litigating some of the claims filed in the original petition; and, that the case be remanded for "an evidentiary hearing" in which inquiry was to be

> . . . strictly limited to whether defendant White, during the brief period in 1976 that Green was incarcerated at Moberly, prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church, and, if so, whether Green's civil rights were thereby violated.

On July 30, 1979, Mr. White petitioned for rehearing upon these grounds: a) that the Opinion violated Mr. White's Seventh Amendment right to a jury trial by mandating that the case be remanded *solely* for an evidentiary hearing; b) that Mr. Green could not maintain the action because barred by the doctrine of *res judicata;* and, c) that Mr. Green's own Complaint clearly established that the action was initiated on behalf of a class and that Mr. Green's own personal religious rights were not in issue. On August 22, 1979, Mr. White supplemented his Motion for Rehearing by adverting to a "Memorandum and Order" issued by the Honorable Elmo B. Hunter in *Green v. Camper,* No. 79-4055-CV-C (U.S.D.C., W.D. Mo. August 16, 1979). Mr. White posited that that "Memorandum and Order" by Judge Hunter established that Mr. Green filed

lawsuits for the purpose of harassment and vexation and that the issue of religion had been raised by Mr. Green on previous occasions and decided adversely to him in every instance. (Judge Hunter's Opinion, just referred to, will be found in Appendix D).

On September 19, 1979, the Eighth Circuit denied both Mr. Green's and Mr. White's Motions for Rehearing. However, Chief Judge Gibson and Judge Ross dissented from the denial of Mr. White's Motion for Rehearing; Chief Judge Gibson filed a Dissent in which he stated that the District Court correctly dismissed Mr. Green's § 1983 lawsuit because: a) Mr. Green epitomized the worst fears of prisoner abuse of the judicial system since he had filed over 500 cases on his own behalf, and unaccountable others under the names of other inmates, and indulged in "bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings"; b) Mr. Green had previously sued Mr. White in regard to the alleged violation of Mr. Green's freedom of religion during his brief stay at the Moberly prison between March 2 and April 15, 1976, which litigation culminated in an Eighth Circuit decision reported at 589 F.2d 378 (8th Cir. 1979), which should foreclose Mr. Green by virtue of the doctrine of *res judicata* from relitigating similar issues; and, c) that the remand for an evidentiary hearing was questionable in view of Mr. Green's request for a jury trial. Chief Judge Gibson concluded his dissent by stating, in the penultimate paragraph:

> Green's frivolous and often scurrilous filings have consumed vast quantities of judicial resources, placing additional burdens on the public purse, and we should not provide him with an opportunity further to indulge himself in this fashion.

MR. GREEN AS LITIGATOR

Mr. Green, a caucasian male, is very much a unique individual. In this section of the Petition Mr. White will set out those factors which make Mr. Green, in terms of litigation, singular in this nation. It is Mr. White's intent to establish that Mr. Green's frivolous and malicious lawsuits repeatedly initiated, in piecemeal fashion, against a relatively few defendants prove his bad faith in bringing this action and support the contention that this action is barred by the doctrine of *res judicata* and that, in addition, Mr. Green is a litigator of some skill, acquired from extensive experience and hence his legal papers are not to be accorded the normal *pro se* inmate grant of liberal construction.

In July, 1975, Mr. Green entered the Missouri State Penitentiary at Jefferson City, Missouri, pursuant to pleading guilty to a charge of rape in the Jackson County, Missouri, Circuit Court, for which he received a sentence of ten years. See, *Green v. Garrott,* 71 F.R.D. 680, 689 (W.D. Mo. 1976); *Green v. Wyrick,* 414 F.Supp. 343 (W.D. Mo. 1976). Since that time Mr. Green has filed, in epic proportions, civil rights and habeas corpus actions on behalf of himself and other inmates. An early partial catalogue of some of these actions, involving state and federal prison officials, and in some instances judicial officers, appears in *Green v. Garrott, supra;* see also, *Green v. Wyrick, supra.* As stated by Judge Hunter in *Green v. Garrott, supra*:

> . . . Clovis Carl Green, Jr., has filed on his behalf a total of 219 civil cases, in the trial and appellate courts in a relatively brief period of time and is continuing to file such cases at an accelerated rate. A fair and realistic overview of these cases and Mr. Green's singular lack of success of carrying the burden of showing

> they are meritorious inescapably brings the conclusion that Clovis Carl Green, Jr., indeed does have a continuing history of engaging in a gross abuse of the judicial process which is impeding the ability of the judiciary to carry out its proper functions. *Id.*, at 692.

In *Green v. Wyrick*, 428 F.Supp. 732 (W.D. Mo. 1976), Judge Hunter found that Mr. Green not only engaged in grossly abusing the judicial system by repeatedly filing frivolous and harassive lawsuits, but that he deliberately and intentionally deceived the Court with respect to his financial status, that he failed to follow court rules, and that he did not faithfully represent inmates on whose behalf he filed lawsuits. Pursuant to this finding Judge Hunter ordered that Mr. Green be enjoined from writing any more writs for other inmates for use in federal court in the Western District of Missouri and from otherwise practicing law in the penitentiary with litigation in the District Court in view. Undaunted, Mr. Green has continued, and continues, to file lawsuits in the Western District not only for himself but on the behalf of others as well. Recently the Eighth Circuit affirmed Mr. Green's convictions for contempt of the injunction. *In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.*, 586 F.2d 1247 (8th Cir. 1978). Also recently, Mr. Green was convicted by a jury of once again violating the injunction and was sentenced by Judge Clark, United States District Court for the Western District of Missouri, to a period of ten years incarceration in the federal penal system. *United States v. Green*, No. 78-0413-01-CR-C-W-3 (U.S.D.C. W.D. Mo., July 5, 1979). That conviction is presently on appeal to the Eighth Circuit.

Judge Hunder was unfortunately prescient when he stated in *Green v. Garrott, supra*, on August 9, 1976, that Mr. Green was ". . . continuing to file such cases at an

accelerated rate. . . ." On November 15, 1978, United States Magistrate Ralston, Western District of Missouri, filed a Report and Recommendation in *Green v. Duram*, No. 78-422-CV-C (W.D. Mo. November 15, 1978)[2] stating that *since* 1966 Mr. Green had filed thirty-four lawsuits in the United States District Court for the Western District of Missouri, four lawsuits in the United States District Court for the Eastern District of Missouri, sixty-six lawsuits in the Eighth Circuit, eleven lawsuits in this Court, eight lawsuits in the Missouri Supreme Court, seventeen lawsuits in the Missouri Court of Appeals, four lawsuits in the Circuit Court of Jackson County, and fifteen lawsuits in the Cole County Circuit Court. At the conclusion of this cataloguing, Judge Ralston noted:

> . . . and, judging from his correspondence addressed to this Court [Mr. Green] intends to continue his abusive process at an accelerated, continued and unabated pace.

Judge Hunter had recent occasion to update Mr. Green's litigation history. *Green v. Camper*, No. 79-4055-CV-C (August 16, 1979) (Appendix D). Therein Judge Hunter concluded that Mr. Green was malicious in the filing of five hundred frivolous lawsuits. It should be noted that in *Green v. Camper* Mr. Green requested equitable relief and damages in the sum of one million dollars for claimed violations of his federally protected rights, including the alleged refusal of prison officials to recognize his claimed "religion," the "Human Awareness Universal Life Church." Mr. White believes that certain excerpts from that Opinion should be brought to the attention of this Court:

---

2. This Opinion by Judge Ralston has been placed in the Appendix of this Petition for this Court's convenience: see, Appendix E.

". . . The Court . . . finds that (1) inmate Green's contentions are duplicative of other contentions he has made in other cases he has filed in the federal court; that (2) his claims are frivolous under 28 U.S.C. § 1915(d) for the same reasons the Magistrate found them to be frivolous, that (3) these claims of petitioner are malicious under 28 U.S.C. § 1915(d); and finally, (4) that this case is but another case in which Petitioner Green is attempting in total bad faith to so swamp the docket of the United States District Court, Western District of Missouri, with frivolous cases, maliciously brought as to cause the Court to be unable to administer and process its docket. Petitioner is of the apparent mind that by flooding the Court with litigation and rendering it unable to administer its docket because of the sheer volume of such frivolous and malicious filings he will cause the Court to order his release from custody.

* * *

"Since July 1, 1979, inmate Green has filed additional cases, including the instant case, bringing his total filings to over five hundred cases. This he has done in spite of being enjoined November 1, 1976, from being a writ writer for other inmates. In Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976) there is detailed a vignette of his writ writing activities demonstrating that such activities were not beneficial or productive to the other inmates. It was found that he simply used alleged complaints of other inmates and their names to advocate his own contentions and interests to the detriment of the other inmates. He was totally ineffective and unsuccessful in such representations. And finally inmate Green was declared to have 'a continuing history of engaging in gross abuse

of the judicial process which is impeding the ability of the Judiciary to carry out its proper functions.' [Citation omitted.]

". . . . '. . . Petitioner frequently repeats allegations in several lawsuits and requests relief (therefor) in separate suits . . . .' . . . Because of his long history of engaging in such tactics after repeated warnings by the Court, it is clear that he persists for the intentional purpose of making it difficult and time consuming to the Magistrate and to the Court to process his litigation.

* * *

". . . Thus, it is clear that, in virtually every instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. [Citation omitted.]

* * *

"Inmate Green is the so-called founder of this 'Church', and claims to be the only one who can speak for it or prepare its litigation. According to him, no one of its 'members' can file any litigation without his consent. Other correspondence and pleadings of inmate Green make it clear that he is the 'church'.

* * *

"Inmate Green has not been content to personally and through 'church' action advance his desire to prevent the federal court from being able to process its docket but has resorted to intimidation tactics as a part of that plan. In early May, 1979, the Court received a threatening letter from a source styling itself 'American Revolutionary Army'. The letter threatened that women, children and many others would be killed if certain things were not done immediately by the

Judges of this Court, including the giving of a pardon or parole to every state prisoner who has less than five years to serve on his sentence and a paid chaplain for Clovis Green's 'church' . . . .

"All of the above is reflective of but some of the nearly innumerable acts of inmate Green deliberately designed to totally frustrate the judicial process and to obtain his release from the State Pennitentiary [sic]. Literally scores of other such acts of simliar design could be added to this opinion but the above should suffice to make it clear that inmate Green not only has but continues to take almost daily actions intended to so abuse the judicial process as to make it impossible for the United States District Court, Western District of Missouri, to process its docket. As earlier indicated, inmate Green's activities have not been limited to this Court. Other courts, including the Eighth Circuit Court of Appeals and the United States Supreme Court, also have come within his orbit.

* * *

"As stated in earlier opinions of this Court, unless the Courts of this nation are to be deemed to be powerless to stop such a flagrant abuse of the judicial process, one man will be able to preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters." (*Id.*, at pages 3, 30, 31, 33, 34, 35, 37, and 38).

Since virtually all of Mr. Green's five hundred lawsuits have been filed *in forma pauperis*, the Eighth Circuit's statement in *Wycoff v. Brewer*, 572 F.2d 1260, 1266-1267 (8th Cir. 1978), is applicable to him:

However, it is one thing to grant to prison inmates, including violent or recalcitrant ones, prospective, declaratory or injunctive relief designed to protect them in the future from unconstitutional practices or conditions. It is quite another thing to expose prison personnel, including personnel in the higher echelons of prison administration and policy formulation, to personal pecuniary liability in suits brought by largely irresponsible inmates under § 1983. Such suits are frequently without merit and may be maliciously motivated. An inmate may use a suit or a threat of a suit as a lever to obtain favorable treatment or a desirable work assignment. Since § 1983 suits are usually prosecuted in forma pauperis, and since prison officials may not constitutionally retaliate against a convict for invoking his right of access to the courts, inmates have essentially nothing to lose, including time, by prosecuting such actions, and they may gain something even if it is nothing but the satisfaction of harassing, inconveniencing and annoying those who have them in charge.

It is worthwhile to review here what Justice Powell stated in his concurring Opinion in *Rose v. Mitchell*, ... U.S. ....., 99 S.Ct. 2993, 3014 (1979):

> It is common knowledge that prison actions occupy a disproportionate amount of the time and energies of the federal judiciary. In the year ending June 30, 1978, almost nine thousand of the prisoner actions filed were habeas corpus petitions. [Citations omitted.] Apart from the burden of these petitions, many of which are frivolous, collateral review can have a particularly deleterious effect upon both the deterrent and rehabilitative functions of the criminal justice systems. [Citations omitted.]

STATEMENT OF PURPOSE

The issues presented in this Petition go to the very bedrock of the federal judiciary's ability to effectively function in light of the liberality with which it has chosen to read *pro se* inmate lawsuits, and the plethora of new and diverse constitutional rights given to state inmates in recent years.

Mr. White requests that this Court issue an opinion stopping Mr. Green, and all of his ilk, who maliciously burden the federal judiciary with vexatious and harassive lawsuits against prison administrators. Chief Judge Gibson in his dissent to the Eighth Circuit's denial of Mr. White's Petition for Rehearing succinctly set forth the problem:

> The actions of Clovis Carl Green, Jr., epitomize the worst fears of prisoner abuse of the judicial system. Inmate Green has filed over five hundred cases on his own behalf, and uncountable others under the names of other inmates. His history of engaging in gross abuse of judicial process is amply set forth in Judge Hunter's opinion in Green v. Camper [citation omitted.] The case at bar presents a small illustration of Green's use of the judicial process and must be viewed in the context of his bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings.

Mr. White believes that he has established that Clovis Carl Green, Jr., a caucasian male incarcerated in the Missouri penal system since 1975, is the nation's leading litigator. It is Mr. White's understanding that no one has filed more lawsuits in this Court than Mr. Green.

Mr. White has been sued innumerable times by Mr. Green, at least three times previously in regard to the identical issue raised in the instant lawsuit. Until recently Mr. Green's only stay at the Moberly prison was for six weeks in the spring of 1976. Nevertheless, a myriad of lawsuits have sprung from the typewriter of Mr. Green in regard to this short stay. Mr. White believes it is now time that the burden be placed where it belongs—on the shoulders of Mr. Green to establish that he has not previously filed similar lawsuits which were decided adversely to him, with prejudice. Mr. Green is a capable and skilled litigator who knows exactly what he is doing; Mr. Green is a man of intelligence and does not define his classes in a class action lawsuit without knowing exactly what he is doing. Mr. Green also knows that the huge number of suits he has filed make it virtually impossible to keep track of them all and that an adverse decision with prejudice may not be recalled years later when Mr. Green again files suit on the same cause of action. Mr. White requests that this Court reverse the Eighth Circuit decision and affirm the dismissal of this lawsuit. It is also requested that this Court apply more lawyer-like rules of construction to those inmate litigators with lawyer-like skills, and tremendous litigation experience, who file lawsuits more for harassment and entertainment than because they have meritorious complaints.

ARGUMENT

I

Is This a Class Action?

As has been detailed previously Mr. Green initiated this lawsuit pursuant to 42 U.S.C. § 1983 and denominated it a class action. A perusal of the Complaint will establish that part of the relief requested by Mr. Green was certification of the lawsuit as a class action. In this regard the Eighth Circuit said:

> Because the complaint was dismissed as frivolous, the District Court did not rule on the issue of certification as a class action. We note, however, that Green is not a member of the class he seeks to represent. In his complaint, Green requested certification of a class of 'all church members now at the Moberly prison.' Green is now and was at the time this action was filed incarcerated at Missouri State Penitentiary in Jefferson City, Missouri. He was confined at Moberly only briefly between March 9, 1976, and April 15, 1976. Green cannot, therefore, maintain this action as a class action on behalf of inmate church members presently confined at Moberly.

Nevertheless, the Eighth Circuit assumed that the Complaint contained individual claims relating solely to Mr. Green. The instant issue is: does the Complaint contain such claims?

Nowhere in Mr. Green's Complaint does he state that only *his* so-called religious rights were violated or infringed upon while *he* was incarcerated at Moberly. In the Complaint it is asserted that Mr. White refused to allow the growing of long hair and beards; however, it

is never asserted that this claim was raised by Mr. Green while *he* was incarcerated at Moberly or that Mr. White refused such a request from *him* during that period of time.

Similarly, in regard to the distribution of a so-called newsletter, it is never stated at what time it was requested that it be distributed. It is never posited that Mr. Green personally requested, on behalf of his so-called "church," that a so-called newsletter be distributed during *his* tenure at Moberly.

The only statement regarding Mr. Green himself, in the pleading, is that "The defendant refuses to allow the plaintiff to return to the Moberly prison upon his release, at full salary, as a minister of his church, denying freedom of religion." The dismissal of this claim by Judge Nangle was affirmed by the Eighth Circuit because of its frivolous nature. Consequently, the only parts of the pleading remaining to be reviewed relate to *others immured at Moberly*—axiomatically this does not include Mr. Green himself.

The Eighth Circuit concluded without so much as a word in support that Mr. Green raised individual claims concerning violations of *his* religious rights while *he* was incarcerated at Moberly. Yet, as established, there is nothing in the record to support such a conclusion and the Eighth Circuit has not elucidated what source it drew upon in making such a finding. The Eighth Circuit ignored that rule of law stating that notice pleading does not exist in a § 1983 lawsuit. Indeed, plaintiffs must plead their case with specificity alleging detailed facts in support of their contentions. See, *Ellingburg v. King,* 490 F.2d 1270 (8th Cir. 1974); *Bergman v. Stein,* 404 F.Supp. 287 (S.D. N.Y. 1975); and, *Blackburn v. Fisk University,* 443 F.2d 121 (6th Cir. 1971). The only detailed facts in

Mr. Green's Complaint concern a class action. Mr. White posits that the Complaint at issue can be construed only as a class action initiated by Mr. Green on behalf of others and not solely in his own behalf. That the Eighth Circuit failed to come to this conclusion is, in Mr. White's opinion, ". . . so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision." United States Supreme Court Rule 19(b).

II

Is This Suit Barred by Res Judicata?

Even assuming, *ad arguendo,* that Mr. Green's Complaint contains individual claims, it is barred by the doctrine of *res judicata.* Mr. White vigorously argued in the Eighth Circuit that Mr. Green had litigated the precise issue in the instant case several times previously and had it ruled against him adversely, with prejudice. A full recapitulation of that argument is unnecessary here since Mr. White's brief, containing that argument, is in the record requested certified and transferred to this Court from the Eighth Circuit. Stated succinctly, Mr. White believes that the Eighth Circuit erred by failing to conclude that a previous case filed by Mr. Green, *Green v. White,* 589 F.2d 378 (8th Cir. 1970), did not act as a previous adjudication of this issue. Mr. White argued that the case culminating in 589 F.2d 378 had issues in it identical to those in the instant suit. In this regard the Eighth Circuit stated:

> Defendant White asserts that Green's individual claims are barred by res judicata. White contends that our decision in Green v. White, 589 F.2d 378 (8th Cir. 1979), precludes litigation of his present claims. In that case, the District Court entered a summary judgment ruling that Green's transfer back to Jefferson City in April, 1976, was clearly for reasons unrelated to his religious beliefs or practice. This Court affirmed. Green's present specific allegations were neither raised nor considered by either court in that case. Therefore, that decision does not preclude litigation of Green's present claims.

However, in dissent, Chief Judge Gibson stated:

> Green has previously sued White in his capacity as superintendent of the Missouri Training Center for Men for allegedly violating Green's freedom of religion during his brief stay in the Moberly prison between March 9 and April 15, 1976. This litigation, which culminated in our decision reported at 589 F.2d 378 (8th Cir. 1979), should foreclose him, by virtue of the doctrine of res judicata from now seeking relief.

That the majority erred by failing to recognize that the instant case is barred by the doctrine of *res judicata* is established by a perusal of the Complaint filed by Mr. Green in 589 F.2d 378. A true and correct copy of that Complaint is included in this Petition and will be found at Appendix F.

On July 19, 1978, Mr. Green filed in the United States District Court for the Eastern District of Missouri a lawsuit against Mr. White under the aegis of 42 U.S.C. § 1983 in which Mr. Green requested one million dollars for the violation of his federal constitutional rights. In Claim Three of that Complaint, which culminated in 589 F.2d 378, Mr. Green alleged:

> During the time that the Plaintiff was in the Moberly prison, the Defendant suppressed the freedom of religion of the Plaintiff and other inmate church

members, and denied the practice of said religion in any manner, violating the First Amendment.

In his "Argument of Law" in the July 19, 1978, Complaint Mr. Green stated:

> Thus, it is unconstitutional for the Defendant to suppress and deny the freedom of religion of the Plaintiff while he was at Moberly prison, and it is unconstitutional for the Defendant to transfer the Plaintiff to Missouri State Penitentiary due to the religious practices of the Plaintiff.

In his "Relief Requested" section Mr. Green requested one million dollars from Mr. White ". . . for the violation of the constitutional rights of the Plaintiff."

Clearly, in July, 1978, Mr. Green sought one million dollars from Mr. White claiming that while the former was at Moberly the latter violated his federal constitutional right to practice his so-called religion. Obviously, the identical claim is the subject of this lawsuit. Why the Eighth Circuit was not able to ascertain that Judge Meredith's dismissal of the July, 1978, Complaint, with prejudice,[3] which dismissal was affirmed by the Eighth Circuit at 589 F.2d 378, bars the instant action by virtue of *res judicata* is difficult to understand.

On January 16, 1979, Mr. Green filed a "Motion for Rehearing En Banc" in 589 F.2d 378[4] wherein it is stated on page 3 at paragraph 6:

> This court did not rule on the issue of the violation of the freedom of religion during the time that

3. See, for a true and photostatic copy of that "Judgment," Appendix G.

4. A true and correct photostatic copy of this Motion will be found in Appendix H accompanying this Petition.

> the Appellant spent at Moberly under the Human Awareness Universal Life Church.

Mr. Green also filed an additional "Motion for Rehearing En Banc" on January 11, 1979,[5] in which he stated at page 2, paragraph 3:

> *The appellant presented the claims that the appellee violated the freedom of religion of appellant during the time that he was at Moberly prison,* which is a meritorious issue under *Green v. Wyrick*, 545 F.2d 1099 (8th Cir. 1976). This Court ignored ruling on this issue in its Court ruling in this case, with no explanation. The Appellant cannot appeal to the U.S. Supreme Court on this issue if this Court does not issue a ruling on that claim, denying access to the courts. [Emphasis added.]

Unequivocally, by Mr. Green's own admissions, he did present to the Eighth Circuit, and to the District Court, in a case culminating in 589 F.2d 378, the contention that during his stay at Moberly from March to April, 1976, Mr. White infringed his First Amendment right to practice his so-called religion.

In *Southern Pacific Railroad Co. v. United States*, 168 U.S. 1, 48-49, 18 S.Ct. 18, 27, 42 L.Ed. 355 (1897), this Court stated in regard to the doctrine of *res judicata*:

> The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground for recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and, even if the second suit is for a different

5. A true and correct photostatic copy of this Motion will be found at Appendix I which accompanies this Petition.

cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.

It is irrelevant that in the instant action Mr. Green has added to his theory of recovery the specific allegations that he was denied the right to grow long hair and a beard and, in addition thereto, the right to distribute his so-called newsletter. *Hall v. Tower Land and Investment Co.*, 512 F.2d 41 (5th Cir. 1975); *Carr v. United States*, 507 F.2d 191, 193-194 (5th Cir. 1975); *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Co.*, 383 F.2d 225, 227 (D.C. Cir. 1967). As stated by the Court in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Co.*:

> It is a well-settled and virtually axiomatic rule of sound judicial administration that a party having several alternative grounds for relief arising out a particular transaction does not have the privilege of litigating his theories one at a time, holding one in reserve while he presses another to judgment. According to the complementary principles of bar and merger whether a party loses or wins relief in his initial action, the judgment embodies all his rights stemming from the transaction involved, and he is foreclosed from later seeking relief on the basis of issues he might have raised in the prior proceeding to support his original claim.

The identical parties are before this Court in the instant lawsuit. The cause of action is identical except for Mr. Green's more specific allegations in regard to Mr. White's alleged denial of certain religious practices by Mr. Green while he was incarcerated at Moberly. The Eighth Circuit had before it, in the lawsuit culminating in 589 F.2d 378, issues identical in nature to those now before this

Court; consequently, that previous adverse decision bars Mr. Green from litigating this issue anew. As stated by this Court in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948):

> The general rule of *res judicata* applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment upon the merits of a cause of action the parties of the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand but as to any other admissible matter which might have been offered for that purpose.' The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment.

Unequivocally Mr. Green has previously litigated whether Mr. White violated the former's constitutional rights by treating him discriminatorially because of his so-called religion while he was immured at Moberly. Despite obvious and abundant case law to the contrary the Eighth Circuit has allowed Mr. Green to drag Mr. White once again into court and allege that the latter violated his so-called religious freedom and rights. The cause of action is the same and the identical parties are involved. Nevertheless, the Eighth Circuit has chosen to ignore the similarities between the instant lawsuit and previous lawsuits decided adversely to Mr. Green, with prejudice. It is time that Mr. White's own rights be vindicated and that he be spared once again being brought into court

by Mr. Green; thus, he requests that the Writ issue because the Eighth Circuit's Opinion, in this regard, is so far from the mainstream of judicial proceedings, and such a departure from previous law, that this Court should exercise its power of supervision. Surely, previous sections of this Petition have established that the instant lawsuit is maliciously motivated. This case does not involve an average inmate litigant. Mr. White's *res judicata* argument should be viewed liberally in light of Mr. Green's substantiated abuse of the judiciary. This is the third time Mr. Green has brought Mr. White into court claiming that the latter violated his constitutional rights because of religious discrimination. Mr. White respectfully requests that this Court view the instant lawsuit in light of the Mr. Green delineated by the Honorable Elmo B. Hunter in *Green v. Camper, supra.*

III

Has Mr. White's Seventh Amendment Right to a Jury Trial Been Violated?

In its July 13, 1979, Opinion the Eighth Circuit remanded this case for an *evidentiary hearing.* Mr. White in his Motion for Rehearing filed on July 30, 1979, noted, in this regard, as follows:

> Once again, this Court has violated [Mr. White's] federal constitutional rights by remanding the case for an evidentiary hearing. Regardless of how circumscribed the inquiry may be at that evidentiary hearing, it is wholly inapplicable. As noted above there is no place for an evidentiary hearing in a § 1983 lawsuit, especially where as here [Mr. Green] himself has already requested a jury trial. What this Court intended by remanding, a second time, for an evidentiary hearing is once again beyond [Mr. White's]

> ken. Will discovery be available to [Mr. White]? Will he be able to depose [Mr. Green] before the evidentiary hearing occurs? If [Mr. White] requests, indeed demands, a jury trial, will Judge Nangle be circumscribed by this Court's Opinion and consequently forced to refuse such a request? [Mr. White] is in need of enlightenment as to exactly what function this Court intends an evidentiary hearing to serve. Stated laconically, it is [Mr. White's] opinion that this Court has issued an illegal order by remanding for an evidentiary hearing.

In his dissent Chief Judge Gibson also questioned the majority's remand for an evidentiary hearing:

> Furthermore, the propriety of remanding for an evidentiary hearing is questionable in view of Green's request for a jury trial. The scope and purpose of the hearing are unclear and it stands in an unusual procedural posture. Since no equitable relief is at stake in the proceeding, an evidentiary hearing on the ultimate issue in dispute may conflict with the right to a jury trial.

As noted, Mr. Green has already requested a jury trial. As detailed in the chronological procedural history of this case Mr. White has never had the opportunity to appear in District Court. This case was dismissed by Judge Nangle on his own motion and an opinion rendered on the merits by the Eighth Circuit before Mr. White was even aware that this lawsuit existed. Should Judge Nangle's dismissal be reversed and this case remanded, counsel for Mr. White states that he will request a jury trial. Of course, there is no longer any question but that either a plaintiff or defendant in a § 1983 lawsuit has a Seventh Amendment right to request and have a jury trial. *Ford v. Brier*, 71 F.R.D. 195, 197 (E.D. Wis. 1976);

Cook v. Cox, 357 F.Supp. 120 (E.D. Va. 1973); *Burch v. Carmody,* 377 F.Supp. 1157, 1158 (E.D. N.Y. 1974); *Richards v. Smoltich,* 359 F.Supp. 9 (N.D. Ill. 1973); see also, *Curtis v. Loether,* 415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974). Of interest is the Eighth Circuit's decision in *Drone v. Hutto,* 565 F.2d 543 (8th Cir. 1977), where that Court assumed, without any discussion, that plaintiffs are entitled to jury trials in § 1983 actions.

Unquestionably, the Eighth Circuit has erred in directing that this case be remanded for an evidentiary hearing. Both Mr. Green and Mr. White want to have this case tried to a jury, if it is to be tried at all. The Eighth Circuit cannot take that right away from either party, although it has chosen to attempt to do so.

An additional inherent difficulty with the Eighth Circuit's remand for an evidentiary hearing is that it forecloses Mr. White from raising other procedural defenses to the lawsuit. It must be remembered that this case was in the Eighth Circuit before Mr. White was aware of its existence. Consequently, he has not filed anything in the District Court as of yet. Nevertheless, the Eighth Circuit's remand seems to foreclose any opportunity for Mr. White to file an answer raising affirmative defenses. It would seem that the Eighth Circuit has ordered that this case go directly to an evidentiary hearing on the merits of those claims the Eighth Circuit found stated a cause of action. Mr. White believes that such an order violates his right to present affirmative defenses to the lawsuit. If this case is to be remanded, then Mr. White wants the opportunity not only to file an answer but to raise the affirmative defense of good faith immunity. Surely, Mr. White as a high prison official has a qualified immunity from liability. *Prosunier v. Navarette,* ..... U.S. ....., 98 S.Ct. 855 (1978). Mr. White must be given the

opportunity to plead that he acted in good faith by denying Mr. Green, assuming he did deny Mr. Green personally, the right to grow long hair and a beard and distribute a newsletter. Mr. White posits that if he personally denied Mr. Green the right to engage in such activities, and it was unconstitutional to do so, he acted in good faith under the belief that Mr. Green was urging the practice of tenets in a bogus religion and that those activities, if allowed to flourish, would have unreasonably endangered the security of the penal institution.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted and the judgment and decision of the Eighth Circuit reversed.

Respectfully submittted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1891

Clovis Carl Green, Jr., on Behalf of Himself and All Other Members of the Human Awareness Universal Life Church Incarcerated at the Missouri Training Center for Men at Moberly, Missouri,
Plaintiffs,

v.

Carl White, Superintendent, Missouri Training Center for Men, Moberly, Missouri,
Defendant.

On Motion for Court Order Directing District Court to Hold Jury Trial.
Submitted: July 2, 1979
Filed: July 13, 1979

Before HEANEY, STEPHENSON and HENLEY, Circuit Judges.

HEANEY, Circuit Judge.

Plaintiff Clovis Carl Green brought this action *pro se* on behalf of himself and all other members of the Human Awareness Universal Life Church incarcerated at the Missouri Training Center for Men at Moberly, Missouri. The action was predicated on 42 U.S.C. §1983 (1976) and alleged that defendant White, Superintendent at Moberly, denied plaintiffs their right to exercise their religious

beliefs. The following specific violations were alleged: church members were denied permission to conduct worship services, bible study classes, and other religious activities, and were denied the right to wear long hair and beards, to engage in conjugal visits, to hold banquets on religious holidays and to distribute the church newspaper *Truth,* to inmates. Green also claimed that plaintiffs' rights were violated by the refusal of the defendant to appoint Green as a full-time paid chaplain. The District Court, on its own motion, dismissed the complaint as frivolous and denied Green's motion for leave to appeal in forma pauperis.

Thereafter, in an amended and unpublished order, this Court granted Green leave to appeal in forma pauperis with respect to three issues only: (1) the alleged denial of his right to participate in church worship services and bible study classes; (2) the alleged denial of his right to wear long hair and a beard as an incident of the exercise of his religion; and (3) the alleged denial of his right to distribute the religious literature of his church. Accordingly, only these issues are presently before the Court.

Because the complaint was dismissed as frivolous, the District Court did not rule on the issue of certification as a class action. We note, however, that Green is not a member of the class he seeks to represent. In his complaint, Green requested certification of a class of "all church members now at the Moberly prison." Green is now and was at the time this action was filed incarcerated at Missouri State Penitentiary in Jefferson City, Missouri. He was confined at Moberly only briefly between March 9, 1976, and April 15, 1976. Green cannot, therefore, maintain this action as a class action on behalf of inmate church members presently confined at Moberly.

Defendant White asserts that Green's individual claims are barred by res judicata.[1] White contends that our decision in *Green v. White,* 589 F.2d 378 (8th Cir. 1979), precludes litigation of his present claims. In that case, the District Court entered a summary judgment ruling that Green's transfer back to Jefferson City in April, 1976, was clearly for reasons unrelated to his religious beliefs or practice. This Court affirmed. Green's present specific allegations were neither raised nor considered by either court in that case. Therefore, that decision does not preclude litigation of Green's present claims.

As noted in our prior order, similar claims of denial of religious freedom were also raised by Green in *Green v. White,* 545 F.2d 1099 (8th Cir. 1976). This Court remanded that case for an evidentiary hearing on Green's claims that defendant denied him his right to practice his religious beliefs. The case was, however, dismissed without prejudice after Green was denied leave to proceed in forma pauperis. It, therefore, does not bar Green's present claims.

The District Court properly ruled that certain of Green's claims were frivolous. However, the three claims on which Green was allowed to proceed on this appeal are not on their faces frivolous. It appears to the Court that Green has never had an opportunity to litigate these claims. We, therefore, remand to the District Court for an evidentiary hearing. The inquiry shall be strictly limited to whether defendant White, during the brief period

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1. The District Court dismissed this action before the defendant had the opportunity to file any responsive pleadings. Under these circumstances, we deem it appropriate to consider this defense even though it was not raised in the District Court.

in 1976 that Green was incarcerated at Moberly,[2] prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church and, if so, whether Green's civil rights were thereby violated.

Green has filed a motion requesting that this Court order the District Court to hold a jury trial in this case. Such a request should be directed to the District Court in the first instance. The motion is denied.

Affirmed in part, reversed in part, and remanded.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

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2. The Court is cognizant that Green has in the past filed numerous suits alleging similar violations of his religious freedom by officials at the penitentiary in Jefferson City and that some such suits were dismissed with prejudice pursuant to a settlement agreement entered into on June 16, 1978, between Green and penitentiary officials. That agreement, and Green's allegations concerning violations of religious rights at Jefferson City, are the subject of continuing litigation in the United States District Court for the Western District of Missouri. We, therefore, reiterate that the present action concerns only alleged violations of Green's rights of religious freedom during his brief incarceration at Moberly.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

78-1891

Clovis Carl Green, Jr.,
Appellant,

vs.

Carl White,
Appellee.

Appeal from the United States District Court for the
Eastern District of Missouri

The Court having considered petition for rehearing en banc filed by appellant pro se and, being fully advised in the premises it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

September 19, 1979

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

78-1891

Clovis Carl Green, Jr.,
Appellant,

vs.

Carl White,
Appellee.

Appeal from the United States District Court for the Eastern District of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellee and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Chief Judge Gibson and Judge Ross would grant the petition of appellee for rehearing en banc. Attached hereto is a statement in dissent by Chief Judge Gibson.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

September 19, 1979

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1891

Clovis Carl Green, Jr.,
Appellant,

v.

Carl White,
Appellee.

On Petition for Rehearing

DISSENT TO THE DENIAL OF THE PETITION FOR REHEARING

FILED: September 19, 1979

GIBSON, Chief Judge.

This case inspires fearful anxiety over the ability of the federal courts to protect themselves from abuse by prisoner filings. Concern for the inordinate amount of judicial resources expended to cope with the deluge of prisoner filings in the federal courts has mounted in recent years. As stated by Mr. Justice Powell, concurring in the judgment in *Rose v. Mitchell,* No. 77-1701, slip op. at 6 (U.S. Sup. Ct. filed July 2, 1979): "It is common knowledge that prisoner actions occupy a disproportionate amount of the time and energies of the federal judiciary."

The actions of Clovis Carl Green, Jr. epitomize the worst fears of prisoner abuse of the judicial system. Inmate Green has filed over 500 cases on his own behalf, and uncountable others under the names of other inmates. His history of engaging in gross abuse of judicial process is amply set forth in Judge Hunter's opinion in *Green v. Camper,* No. 79-4055-CV-C, (W.D. Mo., filed August

16, 1979). The case at bar presents a small illustration of Green's use of judicial process, and must be viewed in the context of his bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings.

Green has previously sued White in his capacity as superintendent of the Missouri Training Center for Men for allegedly violating Green's freedom of religion during his brief stay in the Moberly prison between March 9 and April 15, 1976. This litigation, which culminated in our decision reported at 589 F.2d 378 (8th Cir. 1979), should foreclose him, by virtue of the doctrine of res judicata, from now seeking relief. Furthermore, the propriety of remanding for an evidentiary hearing is questionable in view of Green's request for a jury trial. The scope and purpose of the hearing are unclear and it stands in an unusual procedural posture. Since no equitable relief is at stake in the proceeding, an evidentiary hearing on the ultimate issue in dispute may conflict with the right to a jury trial.

Green's frivolous and often scurrilous filings have consumed vast quantities of judicial resources, placing additional burdens on the public purse, and we should not provide him with an opportunity further to indulge himself in this fashion.

For these reasons I dissent from the denial of the petition for rehearing, with suggestion that the case be reheard en banc.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78-1144 C (3)

CLOVIS CARL GREEN, JR., et al.,
Plaintiffs,

vs.

CARL WHITE, etc.,
Defendant.

ORDER

(Filed October 26, 1978)

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that this cause be, and is dismissed.

/s/ JOHN F. NANGLE
United States District Judge

Dated: October 26, 1978.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78-1144 C (3)

CLOVIS CARL GREEN, JR., et al.,
Plaintiffs,

vs.

CARL WHITE, etc.,
Defendant.

MEMORANDUM

(Filed October 26, 1978)

This matter is before the Court upon the Court's own motion to consider whether this cause should be dismissed as frivolous. 28 U.S.C. §1915(d).

Plaintiff filed this suit pro se on behalf of himself and other inmate members of his church, seeking $1,000,000.00 in damages. Plaintiff alleges that he is a minister with the Human Awareness Universal Life Church. In 1976, plaintiff was a prisoner at the Moberly prison where he was unable to exercise his religious beliefs. Plaintiff alleges that the church believes in long hair and beards, conjugal visits and banquets on religious holidays. Plaintiff alleges that defendant, superintendent of the Missouri Training Center for Men at Moberly, Missouri, refused to appoint plaintiff as a full-time paid chaplain and refuses to allow plaintiff to return to the institution, upon release, at a full salary as minister of the church. Plaintiff alleges in addition that defendant has refused to allow distribution of the church's newspapers.

It is the Court's conclusion that this complaint is frivolous as a matter of law and must be dismissed. *Cf., Brooks v. Wainwright,* 428 F.2d 652 (5th Cir. 1970); *Polakoff v. Henderson,* 370 F.Supp. 690 (N.D.Ga. 1973).

/s/ JOHN F. NANGLE
United States District Judge

Dated: October 26, 1978.

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI

CASE NO. 78-1144-C(3)

CLOVIS CARL GREEN, JR., REG. NO. 27914, MISSOURI STATE PENITENTIARY, JEFFERSON CITY, MISSOURI, ON BEHALF OF HIMSELF AND ALL OTHER INMATES SIMILARLY SITUATED,
Plaintiffs

vs.

CARL WHITE, SUPERINTENDENT MISSOURI TRAINING CENTER FOR MEN
MOBERLY, MISSOURI
Defendants.

CIVIL RIGHTS COMPLAINT AS A CLASS ACTION

COMES NOW THE PLAINTIFF PRO SE, CLOVIS CARL GREEN, JR., on behalf of himself and all other inmate members of his church, and prays that this Court will award money damages of $1,000,000 (One Million Dollars) to the Plaintiff for the violation of the freedom of religion of the Plaintiff, and grant declaratory and injunctive relief for the protection of the constitutional rights of all church members therein. In support of such relief, the Plaintiff states the following:

JURISDICTION

The jurisdiction of this court is invoked under the U.S. Statutes, the U.S. Constitution, and 42 U.S.C. section 1983 as a class action suit.

CLAIMS

1.) The Plaintiff is a minister of God with the HUMAN AWARENESS UNIVERSAL LIFE CHURCH, which believes in God, Jesus Christ and the Holy Spirit, has a formal set of church doctrines and beliefs, had church government, and is a legitimate religion.

2.) In 1976, the Plaintiff was a prisoner at the Moberly prison under the Defendant.

3.) The Defendant refused to recognize said Church, did not allow the full and free exercise of the religious beliefs of the Church, and discriminated against said church in denying any worship services, bible study classes, or other activities.

4.) The Plaintiff found many members of his church wanting services, and in fact, was larger than the Protestant church services, but the Defendant refuses to appoint the Plaintiff as full-time paid chaplain then. This violates freedom of religion.

5.) The church believes in long hair as a gift of God, and beards. The Defendants refused to allow this worship service practice, violating freedom of religion.

6.) The church believes in conjugal visiting to sanctify the marriage before God. Conjugal visiting will not present any danger to the security of the prison and there is no compelling institutional reason to deny this required religious practice by church inmates.

7.) The church wishes to publish its church newspaper, TRUTH, to distribute to all inmates, but the Defendant denied this request.

8.) The Defendant refuses to allow the Plaintiff to return to the Moberly prison upon his release, at full

salary, as the minister of his church, denying freedom of religion.

9.) The church believes in banquets, at the expense of inmates, on religious holidays as a dietary rule. The Defendant denies this right, violating freedom of religion.

RELIEF

WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

1.) That this Court declare this suit is a class action suit on behalf of all church members now at the Moberly prison.

2.) That this Court declare that the HUMAN AWARENESS UNIVERSAL LIFE CHURCH is a legitimate religion under protection of the First Amendment.

3.) That this Court order the Defendant to allow the Plaintiff to hold worship services and other religious activities, at the salary of the defendant upon his release.

4.) That this court order the Defendant to allow church members to grow their hair and beards long under freedom of religion, and allow regular conjugal visiting.

5.) That this Court order the Defendant to allow church banquets on all religious holidays, at the expense of the church members of the prison.

6.) That this Court order the Defendant to publish and circulate the church newspaper, TRUTH, at the expense of the prison.

7.) That this Court order the Defendant to pay money damages of $1,000,000 (One Million Dollars) to the Plaintiff for the violation of his freedom of religion.

8.) That this Court grant any other relief deemed fair, just and proper.

Respectfully submitted,

/s/ Clovis Carl Green Jr.
Clovis Carl Green, Jr.

FORMA PAUPERIS AFFIDAVIT AND OATH

I, CLOVIS CARL GREEN, JR., do swear under oath that due to my poverty that I am unable to pay the costs of these proceedings or give securities thereof, that I have a meritorious action, and am entitled to relief from this court.

I, CLOVIS CARL GREEN, JR., do swear under oath that all statements herein are true and correct to the best of my knowledge and belief.

/s/ Clovis Carl Green Jr.
Clovis Carl Green, Jr.

STATE OF MISSOURI
COUNTY OF COLE

SUBSCRIBED AND SWORN TO BEFORE ME ON .....

/s/ (Illegible)
Notary Public

My Commission Expires: .....

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 79-4055-CV-C

CLOVIS CARL GREEN, JR.,
Plaintiff,

vs.

DONALD CAMPER, et al.,
Defendant.

MEMORANDUM AND ORDER

(Filed August 18, 1979)

On March 21, 1979, plaintiff, Clovis Carl Green, Jr., a Missouri state prisoner who is currently confined in the Missouri State Penitentiary at Jefferson City on a state conviction of forcible rape, provisionally filed in forma pauperis a complaint under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and its corresponding jurisdictional statute, 28 U.S.C. § 1343(3), seeking equitable relief and damages in the sum of $1,000,000.00 for claimed violations of his federally protected rights including the alleged refusal of prison officials to recognize his claimed "religion", the "Human Awareness Universal Life Church". Named as parties were Donald W. Wyrick, Warden of the Missouri State Penitentiary, Donald Camper, Inmate Programs Supervisor of the penitentiary; Joseph Keene, Mailroom Supervisor of that institution and two other employees, Mr. Schank and Mr. Richards.

Foliowing the provisional filing of this case in forma pauperis, it was referred in ordinary course to Magistrate

Richard Ralston for processing in accordance with the provisions of 28 U.S.C. § 636; the Special Order of the Court en Banc of December 22, 1976, providing for such actions; and Local Rule 26 of the United States District Court for the Western District of Missouri.

Review of the complaint reveals that as his grounds for relief inmate Green in a very broad and conclusionary fashion asserts (1) that while in a protective unit of the penitentiary on March 9, 1979, he was given only three sheets of paper and two envelopes three times a week, thus denying him access to the courts;[1] (2) that he received a violation report for "out of bounds" in a kitchen area of the penitentiary which was not so marked with signs; (3) that the prison policy and practice on violation report disciplinary hearings "is unconstitutional because the Adjustment Board" . . . failed to give an adequate statement as to evidence relied on or reasons for the action taken against plaintiff inmate; rather than pointing out the essential facts upon which inferences were based, the Committee merely incorporated the violation report and the special investigator's report"; (4) that he was denied access to the courts because he "was denied the right to obtain and have [his] box of legal papers and law books. . . during the time that [he] was in protective custody in H-Hall during March, 1979"; (5) that he has been denied permission to conduct services of the "Human Awareness Universal Life Church" on Saturdays or to post notice of the same; and (6) he was ordered to shave his beard in violation of the "Human Awareness Universal Life Church".

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1. Inmate Green has been making this contention and the contention he lacks stamps for mailing pleadings, but the record shows he weekly files innumerable papers, suits, letters and other material to this and other courts.

In an objective and painstaking manner Magistrate Ralston fully discussed each of these contentions in his twenty-four page report and found them "frivolous" and "malicious" under § 1915(d) of 28 U.S.C. The undersigned Judge has carefully reviewed the entire case file and Judge Ralston's Report[1] and Recommendation and finds that it is correct. The Court further finds that (1) inmate Green's contentions are duplicative of other contentions he has made in other cases he has filed in the federal court; that (2) his claims are frivolous under 28 U.S.C. § 1915(d) for the same reasons the Magistrate found them to be frivolous; that (3) these claims of petitioner are malicious under 28 U.S.C. § 1915(d); and finally, (4) that this case is but another case in which Petitioner Green is attempting in total bad faith to so swamp the docket of the United States District Court, Western District of Missouri, with frivolous cases, maliciously brought as to cause the Court to be unable to administer and process its docket. Petitioner is of the apparent mind that by flooding the Court with litigation and rendering it unable to administer its docket because of the sheer volume of such frivolous and malicious filings he will cause the Court to order his release from custody.

The above statement concerning inmate Green's premeditated effort to prevent the Court from processing its docket is solidly supported by inmate Green's previous fiilngs and statements that he has made in his pleadings, letters and other documents.

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1. The Magistrate's Report details inmate Green's previous filings on these five alleged grounds. Suffice it to say, inmate Green has had his day in Court on all his allegations that are not so general as to be meaningless.

Inmate Green's Previous Filings
Totaling Over 500 Cases

Commencing in 1972 when he was incarcerated in the Federal Medical Center at Springfield, Missouri, to the date of July 1, 1979, inmate Green has filed the following cases.

From the United States District Court for the Western District of Missouri: *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 2877-1-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. U.S. Bureau of Prisons, et al.,* No. 3015-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. U.S. Attorney General, et al.,* No. 3027-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 3042-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 3069-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. A. R. Elland, et al.,* No. 3092-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-276-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-429-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-450-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-451-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-452-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-462-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-499-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-517-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-518-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-520-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-521-S-WHB-R (W.D. Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,*

et al., No. 73-CV-523-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-532-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. v. Dr. P. J. Ciccone,* No. 73-CV-536-S-WHB-R (W.D. Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-543-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-581-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-596-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-622-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-4-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-7-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-10-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-16-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-17-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-22-S-WHB-R (W.D.Mo.); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-36-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-44-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-55-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-70-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-71-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-81-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-89-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. U. S. Attorney General, et al.*, No. 74-CV-98-S (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. Honorable Dennis J. Stewart,* No. 74-CV-99-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-101-S-WHB-R

(W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-113-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-114-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-133-S-WHB-R (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-138-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-140-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-188-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-205-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-216-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-217-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-241-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-257-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Norman Carlson, et al.*, No. 74-CV-228-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 75-CV-182-S (W.D.Mo 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-157-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-165-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-186-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-187-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-189-C (W.D. Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 76-CV-7-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Treasurer of the United States, et al.*, No. 76-CV-14-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-CV-30-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation,* No. 76-CV-31-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-CV-49-C (W.D.Mo. 1976);

Clovis Carl Green, Jr. v. Honorable Elmo B. Hunter, No. 76-CV-77-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-81-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 76-CV-82-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 76-CV-95-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 76-CV-99-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. United States of America, et al.,* No. 76-CV-100-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-101-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edwards Haynes, et al.,* No. 76-CV-102-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-103-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.,* No. 76-CV-120-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. 76-CV-122-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-129-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-133-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Reverend Garrot,* No. 76-CV-135-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76 CV-139-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-147-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 19880-1 (W.D.Mo. 1971); *Clovis Carl Green, Jr. v. Don Emerson, et al.,* No. 20562-4 (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Steve Collins,* No. 74-CV-222-W-2 (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. U.S. Attorney General, et al.,* No. 75-CV-125-W-4 (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Colorado,* No. 75-CV-144-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. James Bergfable, et al.,* No. 75-CV-157-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 75-CV-169-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 75-CV-177-W-4-R (W.D.Mo. 1975);

Clovis Carl Green, Jr. v. State of Missouri, No. 75-CV-309-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-498-W-4 (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Jack Bergfalk,* No. 75-CV-416-W-4 (W.D. Mo. 1975); *Clovis Carl Green, Jr. v. Carl White,* No. 76-CV-223-W-4 (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-328-W-4 (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 158-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 173-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 180-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 183-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 186-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 206-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 76 CV 205-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* Civil Action No. 77 4106 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 77 4026 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 77 4306 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections, et al.,* Civil Action No. 77 4315 CV-C (W.D. Mo. 1977); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 78 4027 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4028 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4055 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* Civil Action No. 78 4056 CV-C (W.D. Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Division of Corrections,* Civil Action No. 78 4057 CV-C (W.D.Mo. 1978); *Clovis Carl Green v. Donald W. Wyrick,* Civil Ac-

tion No. 78 4058 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* Civil Action No. 78 4106 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4107 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4148 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 4201 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* Civil Action No. 78 4200 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Clerk, United States District Court for the Western District of Missouri, et al.,* Civil Action No. 78 4203 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.,* Civil Action No. 78 4207 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Durham, et al.,* Civil Action No. 78 4222 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Joseph Keene, et al.,* Civil Action No. 78 4223 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Jerry Archer, et al.,* Civil Action No. 78 4224 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.,* Civil Action No. 78 4225 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Mr. Dawson, et al.,* Civil Action No. 78 4226 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Susan Stanton,* Civil Action No. 78 0737 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 77 0076 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America,* Civil Action No. 79 4005 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 79 4046 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Joseph Keenes,* Civil Action No. 79 4051 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald Camper, et al.,* Civil Action No. 79

4055 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.,* Civil Action No. 79 4067 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. State of Missouri,* Civil Action No. 79 4068 CV-C (W.D.Mo.); *Clovis Carl Green v. The Honorable Elmo B. Hunter, et al.,* Civil Action No. 79 4069 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. The Circuit Court of Cole County, Missouri, et al.,* Civil Action No. 79 4078 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Otto Walters, et al.,* Civil Action No. 79 4079 CV-C (W.D.Mo.); and *Clovis Carl Green, Jr. v. Clerk, Western District of Missouri,* Civil Action No. 79 4143 CV-C (W.D.Mo.).

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No. 5-73-11 (D.Minn. 1973); *Clovis Carl Green v. Richard Swanstrom,* No. 5-73-11 (D.Minn. 1973); *Clovis Carl Green, Jr. v. R. L. Aaron,* No. 5-73-23 (D.Minn. 1973): *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al.,* No. 5-73-43 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al.,* No. 5-73-68 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al* No. 5-73-75 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-99 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* 5-73-100 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-101 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-105 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Norman Carlson, et al.,* No. 5-73-125 (D.Minn. 1975); *Clovis Carl Green, Jr. v. United States Parole Office,* No. 5-74-18 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Honorable Miles Lord,* No. 5-74-1-M (D.Minn. 1974). Records relating to the twenty-second case were unavailable.

From the United States District Court for the Eastern District of Missouri: *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 75-914-C (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. 75-955 (E.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-993 (E.D. Mo. 1975); *In re Green* (dismissed without assignment of docket number 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* 75-1165 (E.D.Mo. 1976); *In re Green* (dismissed without assignment of docket number 1976); *Clovis Carl Green, Jr. v. Carl White,* No. 76-299 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White,* No. N-76-22 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White* (dismissed without assignment of docket number 1976); *Clovis Carl Green, Jr. v. Dr. Harold Robb, et al.,* No. 76-421 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* No. 76-425 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 76-452 (E.D.Mo. 1976); *Clovis*

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Hunter, No. 75-8062 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8125 (8th Cir. 1975); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 75-8147 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8164 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, No. 75-8197 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8211 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8055 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, No. 76-8069 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Treasurer of the United States Department of Treasury, et al.*, No. 76-8079 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8090 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-8095 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 78-8096 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, No. 76-8100 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8101 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-1802 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, No. 76-1929 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin et al.*, No. 76-1940 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, No. 76-1941 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, No. 76-1942 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-1943 (8th Cir. 1976); *In re: Clovis Carl Green, Jr.*, No. 78-1442 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, No. 78-1698 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White*, No. 78-1714 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. John Regan, et al.*, Misc. No.

76-8114 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, Misc. No. 76-8126 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White*, Misc. No. 76-8133 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. William H. Becker, et al.*, Misc. No. 76-8135 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8140 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, Misc. No. 76-8147 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8148 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, Misc. No. 76-8156 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, Misc. No. 76-8164 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 76-8175 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, Misc. No. 76-8176 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, Misc. No. 76-8177 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8184 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, Misc. No. 76-8185 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Haynes, et al.*, Misc. No. 76-8189 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8201 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8202 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8209 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Clerk, U.S. District Hunter, et al.*, Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 76-8229 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8249 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 76-8250 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick*, Misc. No. 76-8253 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, Misc.

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1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 78-8204 (8th Cir. 1978); *In the Matter of: Green and Steven Dale Davis, Petitioners*, Misc. No. 78-8205 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8214 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8215 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 78-8216 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8217 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8219 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8221 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8222 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8225 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8228 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8229 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White*, Misc. No. 8230 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, Misc. No. 78-8236 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8247 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8249 (8th Cir. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, Misc. No. 78-8259 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8001 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.*, Misc. No. 79-8002 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8005 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.*, Misc. No. 79-8010 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Lt. Durham, et al.*, Misc. No. 79-8011 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Joseph Keenes, et al.*, Misc. No. 79-8012 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Jerry Archer, et al.*, Misc. No. 79-8013 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.*, Misc. No. 79-8014 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Misc. No. 79-8017 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8019 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8039 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8040 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Missouri Board of Probation and*

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From the Supreme Court of the United States: *Clovis Carl Green, Jr. v. United States*, No. 72-5880 (1972); *Clovis Carl Green, Jr. v. United States*, No. 73-5433 (1973); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 75-5421 (1975); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 76-5155 (1976); *Clovis Carl Green, Jr. v. H. Kenneth Wangelin, et al.*, No. 76-5195 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 76-5317 (1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 77-6379 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6362 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6555 (1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole*, No. 78-5407 (1978); and *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5351 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 78-5699 (1979); *Clovis Carl Green, Jr. v. Clerk of United States District Court for the Western District of Missouri*, No. 78-5717 (1979); *Clovis Carl Green, Jr. v. Judge Elmo B. Hunter*, No. 78-5732 (1979); *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5799 (1979); *In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.*, No. 78-5845 (1979); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 78-5848 (1979); *Clovis Carl Green, Jr. v. Carl White*, No. 78-6097 (1979); *Clovis Carl Green, Jr. v. Donald Wyrick*, No. 78-6278 (1979); *Clovis Carl Green, Jr. v. Russell G. Clark, et al.*, No. 78-6281 (1979); *Clovis Carl Green, Jr. v. Carl White*, No. 78-6311 (1979); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 78-6327 (1979); *Clovis Carl Green, Jr. v. Richard Ralston, et al.*, No. 78-6359 (1979); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 78-6360 (1979); *Clovis Carl Green,*

Jr. v. Hon. Elmo B. Hunter, et al., No. 78-6686 (1979); and *Clovis Carl Green, Jr., et al., v. Hon. Elmo B. Hunter, et al.*, No. 79-5053.

From the Circuit Court of Cole County, Missouri: *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27879 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27905 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27919 (1975); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 27970 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27971 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden, et al.*, No. 28016 (1975); *Clovis Carl Green, Jr., on behalf of Linda Smithers, Barbara Davis, Juanita Vitalli, Kathy Webb and all other unknown women held at Missouri State Penitentiary v. Donald Wyrick, Warden*, No. 28045 (1975); *Clovis Carl Green, Jr. v. Edward Haynes*, No. 28063 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28117 (1975); *Clovis Carl Green, Jr. v. Edward Haynes*, No. 28079 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28137 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28139 (1975); *Clovis Carl Green, Jr. v. Donald M. Camper, et al.*, No. 28165 (1975); *Clovis Carl Green, Jr. v. Captain Manness, et al.*, No. 28175 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28176 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28177 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28248 (1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28249 (1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 28503 (1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 28533 (1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28567 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 28677 (1976); *Clovis Carl Green v. Director, Division of*

Corrections, No. 28710 (1976); *Clovis Carl Green, Jr. v. Department of Probation and Parole*, No. 29133 (1977); *Clovis Carl Green, Jr. v. Department of Probation and Parole and Director, Division of Corrections*, No. 30184 (1978); *Clovis Carl Green, et al. v. Donald W. Wyrick*, No. 30214 (1978); *Clovis Carl Green, Jr., et al. v. Director, Division of Corrections, et al.*, No. 30270 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 30292 (1978); *Clovis Carl Green, Jr. v. Governor, et al.*, No. 30661 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30665 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30663 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 30665 (1978); *Clovis Carl Green, et al. v. Director, Division of Corrections, et al.*, No. 30685 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 30614 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30615 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 30634 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections, et al.*, No. 30894 (1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, CV179-133cc (1979); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.*, No. CV179-515cc (1979); *Clovis Carl Green, Jr. v. Don Smith, et al.*, No. CV179-537cc (1979).

From the Circuit Court of Greene County, Missouri: *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone*, No. 76248-4 (1976).

From the Circuit Court of Jackson County, Missouri: *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 75-2852 (1975); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 76-0747 (1976); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2295 (1978); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2360 (1978); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2510 (1978);

and *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2824 (1978); *Clovis Carl Green, Jr. v. State of Missouri,* CV 790865 (1979).

From the Missouri Court of Appeals, Kansas City District (now Western District): *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27852 (Mo.App. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27911 (Mo. App. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27933 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Robert Frazer,* No. KCD 28130 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. Keith Bondurant,* No. KCD 28263 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28304 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.,* No. KCD 28305 (Mo. App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Moore,* No. KCD 28353 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 20380 (Mo.App. 1975); *Clovis Carl Green, Jr. v. James T. Riley,* No. KCD 28381 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. KCD 28385 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. KCD 28395 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28432 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28452 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28541 (Mo.App. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 28570 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James A. Moore,* No. KCD 28685 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28713 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Judge Riley,* No. KCD 30604 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Henry R. Bratkowski,* No. 028769 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 028771 (Mo.App. 1976); *Clovis Carl Green, Jr. v.*

Edward Haynes, No. 028770 (Mo.App. 1976); *In Re Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028854 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028949 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 029110 (Mo.App. 1976); *Clovis Carl Green, Jr., et al. v. Donald W. Wyrick,* No. 30180 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30359 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Honorable Byron Kinder and Hon. James T. Riley,* No. 30360 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole,* No. 30365 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Division of Corrections and Donald Wyrick,* No. 30373 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri and Donald Wyrick,* No. 30374 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30436 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30454 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30464 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30474 (Mo.App. 1978); and *Clovis Carl Green, Jr. v. Cole County Circuit Court,* No. 30520 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 30782 (Mo.App. 1979); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30813 (Mo. App. 1979); *Clovis Carl Green, Jr. v. Judge Riley,* No. 30604 (Mo.App. 1979); and *Clovis Carl Green, Jr. v. Judge Riley,* No. 30658 (Mo.App. 1979).

From the Missouri Supreme Court: *Clovis Carl Green, Jr. v. State of Missouri,* No. 59007 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59018 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59055 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 59130 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59207 (Mo. 1975); *Clovis Carl Green, Jr. v. Hon. James T.*

Riley, No. 59264 (Mo. 1975); *Clovis Carl Green, Jr., on behalf of Linda Smothers, et al. v. Hon. James T. Riley,* No. 59265 (Mo. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. 59309 (Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick Warden,* No. 59315 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59340 (Mo. 1975); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 59432 (Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 59433 (Mo. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Moore,* No. 59522 (Mo. 1976); *Clovis Carl Green, Jr. v. Dr. Henry R. Bratkowski,* No. 59558 (Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 59559 (Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 59560 (Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 59600 (Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden,* No. 59681 (Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 59664 (Mo. 1976); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 60743 (1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* No. 60923 (Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 60924 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 60325 (Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* No. 60938 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 20945 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Cole County, Missouri,* No. 61061 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 61276 (1979); and *Clovis Carl Green, Jr. v. Circuit Court of Jackson County,* No. 61305 (1979).

Since July 1, 1979, inmate Green has filed additional cases, including the instant case, bringing his total filings to over five hundred cases. This he has done in spite of being enjoined November 1, 1976, from being a writ

writer for other inmates.[1] In Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976) there is detailed a vignette of his writ writing activities demonstrating that such activities were not beneficial or productive to the other inmates. It was found that he simply used alleged complaints of other inmates and their names to advocate his own contentions and interests to the detriment of the other inmates. He was totally ineffective and unsuccessful in such representations. And finally inmate Green was declared to have "a continuing history of engaging in gross abuse of the judicial process which is impeding the ability of the Judiciary to carry out its proper functions."[2] See Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976).

Inmate Green has not been content with the filing of hundreds of frivolous and malicious actions. In 1976 in Green v. Wyrick, (W.D. Mo.) 423 F. Supp. 732 at 736 it

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1. Even the injunction has not deterred inmate Green. His deliberate violation of that injunction by his numerous legal activities for other inmates has twice resulted in his conviction for criminal contempt of Court. See, In The Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr., 586 F. 2d 1247 (8th Cir. 1978) and United States v. Clovis Carl Green, Jr., Criminal Action No. 79-04013-01-CR-W-4 (W.D. Mo. 1979).

2. It was there noted that this same type of willful abuse of the judicial process had also been carried out in the state courts. One Missouri State Court characterized inmate Green's activities as "a calculated abuse of process of the same or similar nature as that condemned by the federal district Court." Clovis Carl Green, Jr. v. State of Missouri, Civil Action No. 78-2824, Mo. Cir. Ct., 16th Jud. District, 8/25/78, unpublished opinion. The Eighth Circuit Court of Appeals was in agreement as to inmate Green's litigation activities, see, Green v. Wyrick, Misc. No. 76-8096 (8th Cir., June 3, 1976) and Green v. Garrott, Misc. No. 76-8184 (8th Cir. Nov. 2, 1976). And, see Green v. Garrott, 76 CV 100-C (E.D. Mo. August 25, 1976) in which Judge Wangelin entered an injunctive order against inmate Green, declaring: "As of this date Clovis Carl Green, Jr., has filed in excess of 200 lawsuits. All of these lawsuits have been frivolous . . . ." In Green v. Haynes, CV 102-C (W.D. Mo. 1976) Magistrate Stewart wrote, petitioner's repeated "filing of impertinent allegations constitutes an imminent threat to the administration of justice in this district, when judicial time and effort must be taken to evaluate them."

was noted: "First, despite the experience of having filed 'hundreds' of lawsuits, petitioner consistently and deliberately has failed to follow the proper procedures and rules for filing actions in this Court. Contrary to local rules requiring inmates to submit petitions on court-approved and court-provided forms, and Rule 8(a), Federal Rules of Civil Procedure, requiring a short and plain statement of the claim, petitioner continues to submit voluminous pro se pleadings containing conclusionary statements and long-winded recitations of irrelevant facts and allegations . . . Petitioner (has) the habit of sending ex parte motions and letters to the Court, without serving opposing counsel with a copy . . . Petitioner's pleadings frequently contain offensive, impertinent, and irrelevant comments, the nature of which twice has caused the Court to strike petitioner's pleadings as 'vile and scandalous'. Petitioner regularly ignores, refuses to answer or makes 'irrelevant' answers in response to questions or court provided forms concerning his financial status or previous history of litigation. . . . Petitioner frequently repeats allegations in several lawsuits and requests relief (therefor) in separate suits . . . ." Inmate Green continues these activities. His pleadings continue to be of such a nature as to make it unreasonably difficult, if not impossible, to process his case in an orderly fashion. Because of his long history of engaging in such tactics after repeated warnings by the Court, it is clear that he persists for the intentional purpose of making it difficult and time consuming to the Magistrate and to the Court to process his litigation.

As stated by the Magistrate in his present Report and Recommendation, "Aside from the sheer quantity of plaintiff's litigation, the quality of his claims also demonstrate the maliciousness of the legal actions which he has

initiated against prison officials, court personnel and judicial officers. For example, in the cases styled *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Civil Action No. 77-4315 CV-C (W.D. Mo.), and *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77-4306 CV-C (W.D. Mo.), plaintiff alleged that prison disciplinary actions had been and were continuing to be, initiated against him by prison officials, resulting in his confinement in segregated units in retaliation for his legal activities and for his attempts to proselytize on behalf of his newly-founded 'religion'. After a full three-day evidentiary hearing, at which petitioner was represented by able counsel, appointed by the Court, it was clearly evident that 'in each instance of disciplinary action shown . . ., petitioner [had] not been disciplined for his legal activities, but rather for clear violations of prison rules and regulations.' *Id.* (Unpublished Report and Recommendation of May 10, 1978). And a later evidentiary hearing set in those cases, the purpose of which was to adjudicate plaintiff's 'religious' claims, was aborted by his dismissal of those actions. Another evidentiary hearing, set in the cause styled *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78,4216 CV-C (W.D. Mo.), to determine his claim that other inmates and prison supervisory personnel had physically abused him, was again dismissed by plaintiff on the morning of trial. And another evidentiary hearing, held on May 29, 1979, in the cause styled *Clovis Carl Green v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77-4306 CV-C (W.D. Mo.), upon his claim that prison officials had breached their settlement agreement by not allowing him to conduct 'church' meetings on Saturdays resulted in a judicial finding that his claim had absolutely no factual basis. Accordingly, his motion to 'reopen' the issues in that cause was denied. Thus, it is clear that, in virtually every

instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. See, *Green v. Wyrick,* 428 F. Supp. 732, *et al.,* Civil Action No. 76 CV 100-C (E.D. Mo. 1976).

"'[N]o one, rich or poor, is entitled to abuse the judicial process.' Hardwick v. Brinson, 523 F. 2d 798, 800 (5th Cir. 1975); Ex parte Tyler, 70 F.R.D. 456 (W.D. Mo. 1976). Accordingly, in light of plaintiff's history in this, and other courts, of initiating frivolous and malicious litigation against prison authorities, parole officials, court personnel, judicial officers, and other governmental officers, and his demonstrated abuse of the judicial process at public expense, involving extreme costs in terms of time and expense* on the part of state and federal judicial and executive personnel, and the public as a whole, this action should be characterized as 'malicious' and should be dismissed for that reason alone."

Additionally illustrative of inmate Green's intent to "swamp" the Court with frivolous actions are the following excerpts from some of his pleadings and letters: From inmate Green's July 23, 1979, Motion for a Jury Trial in the instant case, "Now the Prisoners' Law Collective has been formed under the sponsorship of the Human Awareness Universal Life Church.[1] The goal and aim of the P. L. C. . . . is to encourage inmates to file many

*The litigious activities of petitioner "have cost the government, in a conservative estimate, thousands of dollars . . .". *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 76 CV 100-C (W.D. Mo. 1976), (unpublished opinion of Judge Wangelin).

1. Inmate Green is the so-called founder of this "Church", and claims to be the only one who can speak for it or prepare its litigation. According to him, no one of its "members" can file any litigation without his consent. Other correspondence and pleadings of inmate Green make it clear that he is the "church".

court suits against the prison, parole board and State. This plaintiff (Green) will assist the inmates in the state courts, and other 'jail house attorneys' will prepare the court suits in this Western District of Missouri. Hopefully, the number of court suits will double in the next six months, then double again in the following six months. If possible, we would like to have 4 or 5 times as many court actions filed in the next years as has been filed in the past! At the present time, without the legal aid of this plaintiff, more than 100 inmate church members are preparing civil rights court suits to be filed in this Court very soon—and then each one will continue filing more courts suits very often . . . ."

Within the past several weeks in a "letter" to the Clerk of this Court inmate Green stated, "I would like to ask your office to mail 3 sets of court forms for civil rights complaints to each of the 77 inmates" (named). * * * "The reason that these inmates would need 3 sets of court form is that each inmate plans to prepare and then submit 3 civil rights complaints to this court for the violation of their constitutional rights by prison officers. The Council of Elders has decided that it is the duty of each inmate member of this Church to start filing civil rights complaints individually, and/or class actions, to bring judicial attack of the prison officials' violation of the constitutional rights of inmates." * * * "Each inmate plans to file about 3 separate civil rights complaints upon receipt of the court forms, and then file additional civil rights suits each month . . . ."

Inmate Green has not been content to personally and through "church" action advance his desire to prevent the federal court from being able to process its docket but has resorted to intimidation tactics as a part of that plan. In early May, 1979, the Court received a threatening letter from a source styling itself "American Revolu-

rionary Army". The letter threatened that women, children and many others would be killed if certain things were not done immediately by the Judges of this Court, including the giving of a pardon or parole to every state prisoner who has less than five years to serve on his sentence and a paid chaplain for Clovis Green's "church". Shortly, thereafter, inmate Green wrote three letters to the United States District Court, obviously on Green's claim of denial of access to the courts, stating, "They (certain inmates about to leave prison) feel the most effective method is by assassination and terrorism—bombing of public places, resulting in mass murder. I suggest you begin obeying the law and stop this illegal actions, or many deaths may occur. Sincerely, Clovis Carl Green, Jr." In another letter to the Clerk of this Court inmate Green stated, "Dear Sir, please do not ever return any motions to me in the future, because I will continue to mail them back to you every time. Please keep in mind if you return any documents you are denying access to the courts. Some friends of mine tell me that if this court continues to deny my access to the courts, upon their release from prison, they will use terrorism (mass murder by public bombing) to redress our grievances if the court refuses to allow access. So please do not return any documents or the lives of many people may be on your conscience. Sincerely, Clovis Carl Green, Jr." The third document, filed on May 15, 1979, in a motion titled "Motion for Trial" in *Green v. State of Missouri*, No. 79-4378 CV-C, stated in part: "The plaintiff [Green] submits that the dismissal of this cause will deny access to courts for redress of grievances. * * * The plaintiff [Green] has been told by other revolutionary extremist inmates (who believe in mass murder by public bombings to redress grievances) that in the event that this court rules to deny this case and thereby state that the court will not protect the constitutional rights of the plaintiff

[Green] and other inmates, then the only effective method to protect the rights of prisoners is by mass murder of large numbers of men, women and children by terrorist bombing in public places. Therefore, if this Court decides to rule—in effect—that this Court will not obey the law and protect the rights of prisoners, then the lives of large numbers of citizens will be on the conscience of this Court. Sincerely, Clovis Carl Green, Jr." Clearly, inmate Green has added illegal threats to his arsenal.

All of the above is reflective of but some of the nearly innumerable acts of inmate Green deliberately designed to totally frustrate the judicial process and to obtain his release from the State Penitentiary. Literally scores of other such acts of similar design could be added to this opinion but the above should suffice to make it clear that inmate Green not only has but continues to take almost daily actions intended to so abuse the judicial process as to make it impossible for the United States District Court, Western District of Missouri, to process its docket. As earlier indicated, inmate Green's activities have not been limited to this Court. Other courts, including the Eighth Circuit Court of Appeals and the United States Supreme Court, also have come within his orbit.

The Magistrate's Report and Recommendation that leave to proceed in forma pauperis be withdrawn and that this cause be dismissed as frivolous and malicious under the provisions of 28 U.S.C. § 1915 are approved. Leave to proceed in forma pauperis is withdrawn, and this cause is hereby dismissed with prejudice.

As stated in earlier opinions of this Court, unless the Courts of this nation are to be deemed to be powerless to stop such a flagrant abuse of the judicial process, one man will be able to preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial

function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters.

Congress has authorized the federal courts to dismiss an action which presents issues which are insubstantial, either legally or factually. Jones v. Ault, 67 F.R.D. 124, 127 (S.D. Ga. 1973), affirmed 516 F. 2d 898 (5th Cir. 1975); Boston v. Stanton, 450 F. Supp. 1049 (W.D. Mo. 1978). And, in 28 U.S.C. § 1915(d) Congress has authorized the Courts to dismiss a prospective action whenever it is satisfied, in its discretion, that the proposed action is "frivolous or malicious."[1] See, O'Connell v. Mason, 132 F. 245, 247 (1st Cir. 1946); Duhart v. Carlson, 469 F. 2d 471, 478 (10th Cir. 1972) cert. den. 410 U.S. 958 (1973); Note, Petitioner to Sue In Forma Pauperis: Standards and Procedures for the Exercise of Judicial Discretion, 56 Boston L. Rev. 745, 746.

The Magistrate is directed that until further order of Court, in all pending actions and in all future actions filed by inmate Green in the United States District Court, Western District of Missouri, which are or may be referred to the Magistrate, the Magistrate is first to address the question as to whether or not the action appears to be in furtherance of inmate Green's bad faith efforts to deluge this Court with frivolous or malicious proceedings contrary to 28 U.S.C. § 1915, and, if so, without endeavoring to address the merits of any of the contentions, to recommend to the District Court that the cause be dismissed as either frivolous or malicious or both under the provisions of 28 U.S.C. § 1915.

IT IS SO ORDERED.

/s/ Elmo B. Hunter
United States District Judge

1. Where warranted contempt and criminal action for obstruction of justice may be available. 18 U.S.C. § 1503.

APPENDIX E

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 78 4222 CV-C

CLOVIS CARL GREEN, JR.,
Plaintiff,

v.

LT. DURHAM, et al.,
Defendant.

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE THAT THE CAUSE BE DISMISSED AS "MALICIOUS" UNDER THE PROVISIONS OF 28 U.S.C. § 1915(d)

(Filed November 15, 1978)

Plaintiff, a state prisoner at the Missouri State Penitentiary at Jefferson City, Missouri, and perhaps the most prolific "writ-writer" in the nation, has provisionally filed in forma pauperis a complaint under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343(3), seeking to litigate the validity of certain prison disciplinary proceedings which occurred more than two years ago. Named as parties defendant are Donald W. Wyrick, Warden of the penitentiary, and two prison correctional officers, Major Lewis and Lieutenant Durham. Plaintiff seeks declaratory judgment that the state statute under which prison authorities are authorized to impose is unconstitutional as "vauge," and damages in the amount of $1,000,000 for alleged violations of his federally-protected rights. Following the pro-

visional filing of this cause in forma pauperis, it was referred to the undersigned United States magistrate for processing in accordance with the provisions of 28 U.S.C. § 636; the Special Order of the Court *en banc* of December 22, 1976, providing for the reference of such actions; and Local Rule 26 of the United States District Court for the Western District of Missouri. This action is one of seven filed by plaintiff within a period of approximately one month.

While plaintiff has been granted provisional leave to proceed in forma pauperis,* it is clear that the cause should be dismissed under the provisions of 28 U.S.C. § 1915(d). Under the provisions of Section 1915(d), *supra,* the Court is authorized to dismiss a prospective action whenever it is satisfied, in its discretion, that the proposed action is "frivolous *or* malicious" (emphasis added). Noteworthy is the fact that Congress, in enacting subsection (d) of Section 1915, *supra,* set forth two standards; one creating a standard of "frivolity," and the other creating a standard of "maliciousness." By providing a standard of "frivolity," Congress clearly has authorized the federal courts to dismiss an action which presents issues that are insubstantial, either legally or factually. See, generally, Jones v. Bales, 58 F.R.D. 453, 463 (N.D.Ga. 1972), aff'd 480 F.2d 805 (5th Cir. 1973); Jones v. Ault, 67 F.R.D. 124, 127 (S.D.Ga. 1973), aff'd 516 F.2d 898 (5th Cir. 1975); Boston v. Stanton, 450 F.Supp. 1049 (W.D.Mo. 1978); State of Louisiana ex rel. Purkey v. Ciolino, 393 F.Supp. 102 (E.D.La. 1975); and Clark v. Zimmerman,

*It is the practice of this Court to provisionally file those actions in which leave to proceed in forma pauperis is requested, and then proceed to a determination of whether or not the applicant is eligible under Section 1915, *supra.* A determination of "frivolity" or "maliciousness" may then be made at any stage of the subsequent proceedings.

394 F.Supp. 1166 (M.D.Ga. 1975). "A determination as to frivolity is a legal determination as to whether there 'exists substantiality as to [a plaintiff's claim] of justiciable basis and of impressing reality'." Serna v. O'Donnell, 70 F.R.D. 618 (W.D.Mo. 1976), quoting Carey v. Settle, 251 F.2d 483 (8th Cir. 1965). But subsection (d) of Section 1915, *supra,* couched in the disjunctive, also empowers the Court to dismiss, in its discretion, an action which is "malicious." The purpose of this additional standard is to protect the courts, defendants, and other litigants against plaintiffs or petitioners motivated by malice. For, as stated in *O'Connell v. Mason,* 132 F. 245 (1st Cir. 1904) at 247:

> It is quite clear that Congress while intending to extend to poor and meritorious suitors the privilege of having their wrongs redressed without the ordinary burdens of litigation, at the same time intended to safeguard members of the public against an abuse of the privilege by evil-minded persons who might avail themselves of the shield of immunity from costs for the purpose of harassing those with whom they were not in accord, by subjecting them to vexatious and frivolous legal proceedings.

Quoted with approval in *Durhart v. Carlson,* 469 F.2d 471, 478 (10th Cir. 1972), cert. den. 410 U.S. 958 (1973). Subsection (d) of Section 1915, *supra,* thus "empowers the court to monitor the action to the end of avoiding or minimizing abusive prosecutions by indigent plaintiffs who seek to exploit or to abuse the generous purposes of the statute." Mann v. Leeke, 73 F.R.D. 264, 265 (D.S.C. 1974), aff'd 551 F.2d 307 (4th Cir. 1977). See, generally, Note, *Petitioner to Sue in Forma Pauperis: Standards and Procedures for the Exercise of Judicial Discretion,* 56 Boston L. Rev. 745, 746, 747 (1976).

As indicated by Judge Elmo B. Hunter, *Green v. Wyrick,* 428 F.Supp. 732, 735 (W.D.Mo. 1976), and *Green v. Garrott,* 71 F.R.D. 680 (W.D.Mo. 1976), and by a substantial number of other federal jurists, plaintiff has "a continuing history of engaging in gross abuse of the judicial process which is impeding the ability of the judiciary to carry out its proper functions." This willful abuse of process has also been conducted in the state courts, as illustrated by a recent state court characterization of plaintiff's activities as "a calculated abuse of process of the same or similar nature as that condemned by the federal district court." Clovis Carl Green, Jr. v. State of Missouri, Civil Action No. 78 2824 (Mo.Cir.Ct., 8/24/78, unpublished opinion). A partial catalogue of the literally "hundreds" of lawsuits initiated by plaintiff, involving both the trial and appellate courts of the state and federal judicial systems, appears in *Green v. Garrott,* 71 F.R.D. 680, 685-92 (W.D.Mo. 1976), and *Green v. Wyrick,* 414 F.Supp. 343, 353 (W.D.Mo. 1976). To that list should be added the thirty-four additional actions plaintiff has filed in this Court since the compilation of that listing: *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 158-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 173-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 180-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 183-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 186-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 206-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 76 CV 205-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* Civil Action No. 77 4106 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 77 4026 CV-C (W.D.Mo.

1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 77 4306 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections, et al.,* Civil Action No. 77 4315 CV-C (W.D. Mo. 1977); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 78 4027 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4028 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4055 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* Civil Action No. 78 4056 CV-C (W.D. Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Division of Corrections,* Civil Action No. 78 4057 CV-C (W.D.Mo. 1978); *Clovis Carl Green v. Donald W. Wyrick,* Civil Action No. 78 4058 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* Civil Action No. 78 4106 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4107 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4148 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 4201 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* Civil Action No. 78 4200 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Clerk, United States District Court for the Western District of Missouri, et al.,* Civil Action No. 78 4203 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.,* Civil Action No. 78 4207 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Durham, et al.,* Civil Action No. 78 4222 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Joseph Keene, et al.,* Civil Action No. 78 4223 CV-C (W.D.Mo. 1978);

Clovis Carl Green, Jr. v. Jerry Archer, et al., Civil Action No. 78 4224 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.,* Civil Action No. 78 4225 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Mr. Dawson, et al.,* Civil Action No. 78 4226 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Susan Stanton,* Civil Action No. 78 0737 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 77 0076 CV-W-4-R (W.D.Mo. 1978); and *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-W-4-R (W.D.Mo. 1978); the four actions filed in the United States District Court for the Eastern District of Missouri: *Clovis Carl Green, Jr. v. Carl White,* Civil Action No. 78 20-C (E.D.Mo. 1978); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 78 1144-C(3) (E.D.Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 76 452 C(2) (E.D.Mo. 1978); and *Clovis Carl Green, Jr. v. Dr. Harold Robb,* Civil Action No. 76 421-C(2) (E.D.Mo. 1978); the sixty-six actions filed in the United States Court of Appeals for the Eighth Circuit; *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-1802 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* No. 76-1929 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* No. 76-1940 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* No. 76-1941 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* No. 76-1942 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* No. 76-1943 (8th Cir. 1976); *In re: Clovis Carl Green, Jr.,* No. 78-1442 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* No. 78-1698 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White,* No. 78-1714 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. John Regan, et al.,* Misc. No. 76-8114 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward*

Haynes, et al., Misc. No. 76-8126 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White,* Misc. No. 76-8133 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. William H. Becker, et al.,* Misc. No. 76-8135 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo Hunter, et al.,* Misc. No. 76-8140 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* Misc. No. 76-8147 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8148 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin,* Misc. No. 76-8156 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* Misc. No. 76-8164 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.,* Misc. 76-8175 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* Misc. No. 76-8176 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* Misc. No. 76-8177 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8184 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* Misc. No. 76-8185 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Haynes, et al.,* Misc. No. 76-8189 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Miss. No. 76-8201 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76 8202 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8209 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.,* Misc. No. 76-8229 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8249 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Misc. No. 76-8250 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Misc. No. 76-8253 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* Misc. No. 77-8029 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Misc. No.

77-8145 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 77-8251 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 77-8253 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8021 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8022 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court, et al.*, Misc. No. 78-8043 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court for the Western District of Missouri*, Misc. No. 78-8049 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8054 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard H. Ralston, et al.*, Misc. No. 78-8055 (8th Cir. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, Misc. No. 78-8059 (8th Cir. 1978); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 78-8095 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8096 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8105 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8126 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 78-8164 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8167 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick*, Misc. No. 78-8171 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8172 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court for the Eastern District of Missouri*, Misc. No. 78-8184 (8th Cir. 1978); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, Misc. No. 78-8189 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8191 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Clerk, U.S. District Court, et al.*, Misc. No. 78-8199 (8th Cir. 1978); *Clovis Carl Green, Jr. v.*

Donald W. Wyrick, et al., Misc. No. 78-8204 (8th Cir. 1978); *In the Matter of: Green and Steven Dale Davis, Petitioners*, Misc. No. 78-8205 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8214 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8215 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8216 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8217 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8219 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8220 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8221 (8th Cir. 1978); *In re Green, Petitioner*, Misc. No. 78-8222 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8225 (8th Cir. 1978); the eleven actions filed in the Supreme Court of the United States: *Clovis Carl Green, Jr. v. United States*, No. 72-5880 (1972); *Clovis Carl Green, Jr. v. United States*, No. 73-5433 (1973); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 75-5421 (1975); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 76-5155 (1976); *Clovis Carl Green, Jr. v. H. Kenneth Wangelin, et al.*, No. 76-5195 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 76-5317 (1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 77-6379 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6362 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6555 (1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole*, No. 78-5407 (1978); and *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5351 (1978); the eight actions filed in the Supreme Court of Missouri: *Clovis Carl Green, Jr. v. Donald Wyrick*, No. 59664 (Mo. 1976); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 60743 (1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.*, No. 60923 (Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 60924 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 60325

(Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* No. 60938 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 60945 (Mo. 1978); and *Clovis Carl Green, Jr. v. Circuit Court of Cole County, Missouri,* No. 61061 (Mo. 1978); the seventeen actions filed in the Missouri Court of Appeals: *Clovis Carl Green, Jr. v. Henry R. Bratkowski,* No. 028769 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 028771 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 028770 (Mo.App. 1976); *In Re Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028854 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028949 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 029110 (Mo.App. 1976); *Clovis Carl Green, Jr., et al. v. Donald W. Wyrick,* No. 30180 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30359 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Honorable Byron Kinder and Hon. James T. Riley,* No. 30360 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole,* No. 30365 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Division of Corrections and Donald Wyrick,* No. 30373 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri and Donald Wyrick,* No. 30374 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30436 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30454 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30464 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30474 (Mo.App. 1978); and *Clovis Carl Green, Jr. v. Cole County Circuit Court,* No. 30520 (Mo.App. 1978); the four actions filed in the Circuit Court of Jackson County, Missouri: *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2295 (1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2360 (1978); *Clovis Carl Green, Jr. v. State of*

Missouri, No. CV 78-2510 (1978); and *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2824 (1978); and the fifteen actions filed in the Circuit Court of Cole County, Missouri: *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 28677 (1976); *Clovis Carl Green v. Director, Division of Corrections,* No. 28710 (1976); *Clovis Carl Green, Jr. v. Department of Probation and Parole,* No. 29133 (1977); *Clovis Carl Green, Jr. v. Department of Probation and Parole and Director, Division of Corrections,* No. 30184 (1978); *Clovis Carl Green, Hayes, et al. v. Donald W. Wyrick,* No. 30214 (1978); *Clovis Carl Green, Jr., et al. v. Director, Division of Corrections, et al.,* No. 30270 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30292 (1978); *Clovis Carl Green, Jr. v. Governor, et al.,* No. 30661 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30665 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30663 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30665 (1978); *Clovis Carl Green, et al. v. Director, Division of Corrections, et al.,* No. 30685 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 30614 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30615 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 30634 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections, et al.,* No. 30895 (1978).

In *Green v. Wyrick,* Misc. No. 76-8096 (8th Cir. June 3, 1976, unpublished opinion), the United States Court of Appeals stated, "[T]here is strong reason to believe that [Clovis Carl Green, Jr.,] may be seriously abusing his right to access to the courts for redress for grievances . . .". As evidenced by the foregoing, that belief is a reality. As stated by Judge Donald P. Lay, in *Green v. Garrott,* Misc. No. 76-8184 (8th Cir., Nov. 2, 1976, unpublished opinion):

> [T]hrough gross abuse of the legal process, Green's situation runs parallel with the epic story of the boy who yelled "wolf" too many times — when he actually needed help nobody would believe him. It may be that within the multitude of claims Mr. Green has filed, he has somewhere alleged a legitimate grievance. Notwithstanding the meticulous efforts of busy federal district and appellate judges to find a real grievance, one may nonetheless have been overlooked. Mr. Green has only himself to blame for this. In addition, primarily due to abusive writ writing by prisoners such as Green, the Supreme Court unfortunately in my opinion, has begun to place substantive and procedural restrictions on prisoners' rights previously recognized under the Great Writ. Cf. Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 (1976) * * * It is common sense that conscientious recognition of prison rights can continue only as long as the process is not abused by prisoners to the extent that renders it meaningless. We are coming dangerously close to that time.

And, judging from his correspondence addressed to this Court, plaintiff intends to continue his abuse of process at an accelerated, continued and unabated pace. For, by letter received by the Court on November 1, 1978, plaintiff states, "I have completed the ten separate civil rights complaints that are ready to be notarized and mailed" and requests, "[p]lease send me another ten more civil rights complaint forms and five more sets for filing habeas corpus petitions at once, as I wish to file more court suits." Moreover, plaintiff's intentional abuse of process extends beyond the mere filing of civil actions in the state and federal courts. In virtually every case, plaintiff has made the task of orderly processing extremely difficult if not impossible, by the submission, often ex parte, of countless

motions and documents and his deliberate avoidance of compliance with procedural rules. Green v. Wyrick, 428 F.Supp. 732, 736 (W.D.Mo. 1976); and Clovis Carl Green, Jr. v. Carl White, et al., Civil Action No. 77 4026 CV-C (W.D.Mo.).

Aside from the sheer quantity of plaintiff's litigation, quality of his claims also demonstrates the maliciousness of the legal actions which he has initiated against prison officials, court personnel, and judicial officers. The present action typifies plaintiff's legal actions. Here, he alleges, in broad and conclusory fashion, that more than two years ago he was subjected to disciplinary proceedings which were initiated upon a "false charge" in retaliation for his legal activities. This claim is precisely like those presented in the causes styled, *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Civil Action No. 77 4315 CV-C (W.D.Mo.), and *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77 4306 CV-C (W.D. Mo.), in which five separate prison disciplinary proceedings were challenged on identical, or very similar grounds. In those actions, plaintiff alleged that prison disciplinary actions had been, and were continuing to be, initiated against him by prison officials, resulting in his confinement in segregated units, in retaliation for his legal activities and for his attempts to proselytize on behalf of his newly-founded "religion." After a full three-day evidentiary hearing, at which plaintiff was represented by able counsel, appointed by the Court, it was clearly evident that "in each instance of disciplinary action shown . . ., plaintiff [had] not been disciplined for his legal activities, but rather for clear violations of prison rules and regulations." *Id.* (unpublished Report and Recommendation of May 10, 1978). And a later evidentiary hearing set in those cases, the purpose of which was to adjudicate plaintiff's "religious"

claims, was aborted by his dismissal of those actions. Another evidentiary hearing, set in the cause styled, *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo.), to determine his claim that other inmates and prison supervisory personnel had physically abused him, was again dismissed by plaintiff on the morning of trial. Thus, it is clear that, in virtually every instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. See: *Green v. Wyrick,* 428 F.Supp. 732, 763 (W.D.Mo. 1976), and *Green v. United States of America, et al.,* Civil Action No. 76 CV-100-C (E.D.Mo. 1976).

"[N]o one, rich or poor, is entitled to abuse the judicial process." Hardwick v. Brinson, 523 F.2d 798, 800 (5th Cir. 1975); Ex parte Tyler, 70 F.R.D. 456 (W.D.Mo. 1976). Accordingly, in light of plaintiff's history* in this, and other courts, of initiating frivolous and malicious litigation against prison authorities, parole officials, court personnel, judicial officers, and other governmental officers, and his demonstrated abuse of the judicial process at public expense, involving extreme costs in terms of time and expense on the part of state and federal judicial and executive personnel, and the public as a whole,** this action should be characterized as "malicious" and should be dis-

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*A court "has authority to consult its own records for the purpose of determining whether an action being prosecuted in forma pauperis, notwitstanding the application so to do and the supporting affidavit regular and sufficient on their face, is in fact frivolous and malicious and it may dismiss the action if it finds it is frivolous and malicious." Durhart v. Carlson, *supra.* See also: Conway v. Oliver, 429 F.2d 1307 (9th Cir. 1970).

**The litigious activities of petitioner "have cost the government, in a conservative estimate, thousands of dollars . . .". *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 76 CV 100 CV-C (W.D.Mo. 1976) (unpublished opinion of Judge Wangelin).

missed for that reason alone. This does not mean, of course, that in the face of averments setting forth extreme circumstances petitioner's pleadings will not be entertained and adjudicated. But where, as here, broad, conclusory allegations are set forth in a "shotgun" manner, petitioner should not be subsidized in his abuse of process.

For the reasons stated above, and pursuant to the provisions of 28 U.S.C. § 636, it is therefore

RECOMMENDED that the above-styled cause be dismissed as "malicious" under 28 U.S.C. § 1915(d).

Under the provisions of 28 U.S.C. § 636(b)(1)(C), petitioner may make specific written exceptions to any or all of the foregoing recommendations within 10 days of his receipt thereof.

/s/ Richard H. Ralston
United States Magistrate

Dated this 15th day of November, 1978, at Kansas City, Missouri.

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI

Case No. 78-0020-C

CLOVIS CARL GREEN, JR., REG. NO. 27914,
MISSOURI STATE PENITENTIARY, BOX 900,
JEFFERSON CITY, MISSOURI,
Plaintiff,

vs.

CARL WHITE, SUPERINTENDENT, MISSOURI
TRAINING CENTER FOR MEN, BOX 7,
MOBERLY, MISSOURI,
Defendant.

CIVIL RIGHTS COMPLAINT UNDER
42 U.S.C. SECTION 1983

(Filed July 19, 1978)

COMES NOW THE PLAINTIFF PRO SE, CLOVIS CARL GREEN, JR., and respectfully prays that this Court order the Defendant to pay the Plaintiff the sum of $1,000,-000 (One Million Dollars) for the violation of the constitutional rights of the Plaintiff. In support of such relief, the Plaintiff states:

JURISDICTION

The jurisdiction of this court is invoked under 42 U.S.C. Section 1983 and the U.S. Constitution.

CLAIMS

1.) The Plaintiff was in the Missouri Training Center for Men in Moberly, Missouri in 1976.

2.) The Plaintiff is a minister of the HUMAN AWARENESS UNIVERSAL LIFE CHURCH and said Church believes in God, has orthodox church doctrines, has a church government, is legally incorporated in the State of Missouri as a church, and is recognized by the Internal Revenue Service as a church and tax-exempt.

3.) During the time that the Plaintiff was in the Moberly prison, the Defendant suppressed the freedom of religion of the Plaintiff and other inmate church members, denied the practice of said religion in any manner, violating the First Amendment.

4.) The Plaintiff filed a court suit in this court against the Defendant and Donald W. Wyrick, warden, Missouri State Penitentiary, Jefferson City, Missouri.

5.) After receiving a copy of that court action, the Defendant and Donald W. Wyrick together threatened the Plaintiff that if he did not dismiss the pending court action and stop the church organizing in that prison, then they would transfer the Plaintiff to Missouri State Penitentiary in Jefferson City, Missouri.

6.) When the Plaintiff refused to dismiss the pending court action, then the Defendant ordered the Plaintiff transferred to Missouri State Penitentiary immediately. The official reason is that the Plaintiff made a threat against the life of a guard. However, at no time was the Plaintiff given a violation report on the threat, even though this is a very serious rule violation and all other inmates who make threats against the life of a guard are imme-

diately placed in Administrative Segregation for usually one year. This proves that the real reason for the transfer to Missouri State Penitentiary is due to the religion of the Plaintiff, and due to his court action as

ARGUMENTS OF LAW

The Plaintiff submits that "Prisoners retain their First Amendment rights relating to religious freedom." *Mukmuk v. Commissioner,* 529 F.2d 272 (2nd Cir., 1976), cert. denied, 96 S.Ct. 2238 (1976); *Cruz v. Beto,* 405 U.S. 319 (1972).

In *Howard v. Smyth,* 365 F.2d 428 (4th Cir., 1966), the court said:

> "State prisoner is not bereft of all his rights, but has right to immunity from punishment for making reasonable attempt to exercise his religion, even if religion is unorthodox."

Thus, it is unconstitutional for the Defendant to suppress and deny the freedom of religion of the Plaintiff while he was at Moberly prison, and it is unconstitutional for the Defendant to transfer the Plaintiff to Missouri State Penitentiary due to the religious practices of the Plaintiff.

The court then ruled in *U.S. ex rel. Cleggett v. Pate,* 229 F. Supp. 818 (1964), that

> "Confining a prisoner to segregation unit merely because of pendency of his Civil Rights Act case denies prisoner unhampered access to courts and is in violation of his constitutional rights."

In *Corby v. Conboy,* 457 F.2d 251 (2nd Cir., 1972), the court said:

> "Prisoners no less than other persons have constitutional right of access to courts, and prison authorities

> may neither place burdens on such right, nor *punish its exercise.*" (Emphasis Added).

In *Burns v. Swenson,* 430 F.2d 771 (8th Cir., 1970), the U.S. Court of Appeals for Eighth Circuit ruled:

> "Access of prisoners to court for purpose of presenting their complaints may not be denied or obstructed."

Thus, it is clear that the Defendant does not have the authority to transfer the Plaintiff to Missouri State Penitentiary due to his religion and due to his court action on the prison conditions and treatment. The Defendant violated the constitutional rights of the Plaintiff by his action.

RELIEF REQUESTED

WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

1.) That this Court order the Defendant to pay the Plaintiff $1,000.000 (One Million Dollars) for the violation of the constitutional rights of the Plaintiff.

2.) That this Court declare that the HUMAN AWARENESS UNIVERSAL LIFE CHURCH is a legitimate religion that must be recognized by the Defendant.

Respectfully submitted,

/s/ Clovis Carl Green, Jr.
Clovis Carl Green, Jr.

FORMA PAUPERIS AFFIDAVIT AND OATH

I, CLOVIS CARL GREEN, JR., do state under oath that due to my poverty that I am to pay the costs of these proceedings, that I have a meritorious action and I am entitled to relief from this court.

I, CLOVIS CARL GREEN, JR., do swear under oath that all statements herein are true and correct to the best of my knowledge and belief.

/s/ Clovis Carl Green, Jr.
Clovis Carl Green, Jr.

STATE OF MISSOURI
COUNTY OF COLE

SUBSCRIBED AND SWORN TO BEFORE ME ON JULY 17, 1978.

/s/ William J. Hinson
William J. Hinson
Notary Public

My Commission Expires: June 6, 1980.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

Cause No. N78-20C

CLOVIS GREEN, JR.,
Plaintiff,

v.

CARL WHITE, Superintendent, MISSOURI TRAINING CENTER FOR MEN,
Defendant.

JUDGMENT

(Filed September 18, 1978)

A memorandum dated this day is hereby incorporated in and made a part of this judgment.

IT IS HEREBY ORDERED that defendant's motion for summary judgment be and is granted.

IT IS FURTHER ORDERED that plaintiff's motions for an immediate trial by jury and for a prompt trial by jury be and are denied.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Carl White have judgment against plaintiff Clovis Green, Jr., in this cause. Plaintiff's complaint is hereby dismissed with prejudice.

Dated this 18 day of September, 1978.

/s/ J. H. Meredith
United States District Judge

APPENDIX H

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1714

CLOVIS CARL GREEN, JR.,
Appellant,

- vs -

CARL WHITE,
Appellee.

MOTION FOR REHEARING IN BANC

(Filed January 16, 1979)

Comes now the Appellant Pro Se, Clovis Carl Green, Jr., and prays that this Court grant a rehearing en banc. In support, Appellant states:

1) The Appellant alleged that he was threatened to be transferred from Moberly prison if he did not stop his court suit and church activities. The Appellant stated that he did not threaten the guard and did not admit the threat. The district court erred in accepting the prison records as conclusive evidence.

In Thomas v. Pate, 493 F.2d 151 (7th Cir., 1974), the court said: "For purpose of determining whether inmate's complaint was sufficient to state cause of action under Civil Rights Act for denial of due process in disciplinary proceedings, allegation of complaint would be accepted as true." See also: Cooper v. Pate, 378 U.S. 546 (1964).

In fact, the prison records also show that the Appellant was not arrested and placed in segregation after the threat was made and no violation report was issued. The practice and procedure of the prison is to immediately place any inmate in segregation if he threatens a guard.

2) The Appellant submits that the district court should not dismiss a prisoner's court suit ". . . unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claims which would enable him to relief." Bolding v. Holhouser, 575 F.2d 461 (4th Cir., 1978); Neal v. State of Georgia, 469 F.2d 446 (5th Cir., 1972); Marshall v. Brierly, 461 F.2d 929 (1972); Horn v. People of California, 321 F. Supp. 961 (E.D. Cal., 19

3) The Appellant submits that he must receive a trial on the transfer due to court actions. Ex Parte Hall, 312 U.S. 546 (1941); Landman v. Peyton, 370 F.2d 135 (4th Cir., 1966); Smartt v. Avery, 370 F.2d 788 (6th Cir., 1967); Johnson v. Avery, 89 S. Ct. 747 (1969); Campbell v. Beto, 460 F.2d 165 (1972).

4) The Appellant submits that he must receive a trial on the transfer due to church activities. Crub v. Beto, 92 S. Ct. 1079 (1972); Mukmuk v. Commissioner, 529 F. 2d 272 (2nd Cir., 1975), cert. denied 96 S. Ct. 2238 (1976); Howard v. Smyth, 365 F. 2d 428 (4th Cir., 1966); Chapman v. Kleindienst, 507 F. 2d 1246 (7th Cir., 1974); Kauffman v. Johnson, 454 F. 2d 264 (1972).

5) If the Appellant is denied a trial due to prison records only, then the prison officials can then fabricate false statements in prison records to defeat the civil rights complaint. The prison does not have any written statements signed by the Appellant in which the Appellant admitted the threat.

6) This court did not rule on the issue of the violation of the freedom of religion during the time that the Appellant spent at Moberly under the Human Awareness Universal Life Church.

Wherefore, Appellant prays that this Court grant a rehearing en banc.

Respectfully Submitted,

/s/ Clovis Carl Green, Jr.

APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1714

CLOVIS CARL GREEN, JR.,
Appellant,

-vs-

CARL WHITE,
Appellee.

MOTION FOR REHEARING EN BANC

(Filed January 11, 1979)

Comes now the Appellant Pro Se, Clovis Carl Green, Jr., and prays that this Court will grant a rehearing in banc. In support, Appellant states:

1) This Court erred in its decision supporting the district court's granting of summary judgement. There was a dispute in material issue in this case, so summary judgment was not proper. The Appellant denied making the alleged threat and denied any admission that he made the alleged threat. The Appellant claimed that he was in his room at the time of the alleged threat. The records of the Missouri Division Of Corrections show that (a) the Appellant was not arrested at once and placed in segregation but remained in general prison population for 24 hours after the threat was made, and according to prison practice, if an inmate threatens a guard, the inmate is placed in segregation immediately and (b) there was no rule violation report issued against the Appellant, and according to prison rule book, if an inmake makes a threat

against a guard, he is given a violation report. There is a serious conflict in the records of the Missouri Division Of Corrections so the court cannot grant summary judgment, believing only part of the records.

2) This Court erred in determining that there should be no trial on the issue of the transfer. The Appellant alleged that the prison officials threatened him that he would be transferred if the court action was not dismissed, and church activities ended. The district court must accept that claim as true and cannot dismiss the civil rights complaint without trial to allow the Appellant the chance to prove his claim, as the claim would entitle him to relief. The district court cannot dismiss the court suit unless it appears beyond doubt that Appellant could prove no set of facts to support his claims.

3) The Appellant presented the claims that the Appellee violated the freedom of religion of Appellant during the time he was at Moberly prison, which is a meritorious issue under Green v. White, 545 F.2d 1099 (8th Cir., 1976). This Court ignored ruling on this issue in its court ruling in this case, with no explanation. The Appellant connot appeal to the U.S. Supreme Court on this issue if this Court does not issue a ruling on that claim, denying access to the courts.

Wherefore, Appellant prays that this Court will grant a rehearing en banc in this case.

Respectfully Submitted,

/s/ Clovis Carl Green, Jr.

Supreme Court, U. S.
FILED
JAN 16 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-920

CARL WHITE,
Petitioner,

vs.

CLOVIS CARL GREEN, JR.,
Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-920

CARL WHITE,
Petitioner,

vs.

CLOVIS CARL GREEN, JR.,
Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

Carl White, Superintendent of the Missouri Training Center for Men, Moberly, Missouri, petitioner herein, by and through Attorney General John Ashcroft, State of Missouri, offers this "Supplemental Petition," in accordance with this Court's Rule 24.5, in order to make available to this Court a recent "Order" and "Memorandum" issued by the Honorable H. Kenneth Wangelin, United States District Judge, Eastern District of Missouri:

On December 12, 1979, a "Petition for Writ of Certiorari" was filed on Carl White's behalf. Therein, it was requested that this Court review a Judgment and Opinion issued by the Eighth Circuit on July 13, 1979. Although the Eighth Circuit concluded that some of Mr. Green's contentions were frivolous, and properly dismissed by the Eastern District, it ordered that an evidentiary hearing be held in

regard to ". . . whether [Mr. White's alleged denial of] Mr. Green's right to wear long hair and beards [sic] as an incident of the exercise of his religion, . . . and [Mr. White's] alleged denial of [Mr. Green's] right to distribute the religious literature of his church amounted to a denial of Mr. Green's federal constitutional rights." In so concluding the Eighth Circuit found that Mr. Green initiated the instant lawsuit on his own behalf; that it was not a class action; that the action was not barred by *res judicata*; and, inferentially, that neither party had a right to a jury trial.

In his "Petition" Mr. White discussed, at some length, Mr. Green's gross abuse of this country's judicial system—both federal and state. As noted by Judge Hunter in *Green v. Camper,* No. 79-4055-CV-C (U.S.D.C. W.D. Mo., August 18, 1979)—Appendix D—Mr. Green has filed over 500 separate lawsuits during the years 1972 through July 1, 1979, inclusive. Based upon this fact, in addition to the conclusion reached by a number of federal and state judges that Mr. Green's myriad lawsuits were maliciously motivated, Mr. White requested that a writ of certiorari be issued, the Eighth Circuit Opinion reversed, and Mr. Green denied the right to once again haul Mr. White into court not only upon meritless grounds but upon grounds previously ajudicated adversely to Mr. Green. As stated by Mr. White in his "Petition," at page 29:

> "It is time that Mr. White's own rights be vindicated and that he be spared once again being brought into court by Mr. Green . . . ."

On December 6, 1979, the Honorable H. Kenneth Wangelin, United States District Judge, issued an "Order" barring Mr. Green from filing lawsuits in forma pauperis and further, that he be enjoined as follows:

> "In any pleading, writ, petition, complaint, or motion filed or attempted to be filed in a United States District Court subsequent to the service of the Order, you are hereby ordered to verify all pleadings, writs, petitions, complaints or motions; to include in same a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action; to include in same a statement referring to this Court's opinion, and to send a copy of same to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri."

This "Order" was accompanied by a "Memorandum" explaining that the actions taken were not only constitutionally permissible but mandated because of "Inmate Green's avowed purpose to frustrate the judicial process. . ." which "is so flagrant that it regularly preempts scare and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds." A true and correct copy of the "Order" and "Memorandum" accompany each "Supplemental Petition." *In the Matter of the Suspected Contumacious Conduct of Clovis Carl Green, Jr.,* 79 Misc. 64 (U.S.D.C. E.D. Mo., December 6, 1979). The "Order" and "Memorandum" establish that the instant lawsuit is maliciously brought and that it is part of Mr. Green's coordinated and conscientious effort to harass prison officials into granting him de facto relief. However, before Mr. White discusses the relevance of Judge Wangelin's "Order" and "Memorandum" a short explanation follows detailing the reasons why the December 6, 1979, Opinion was not included in the original "Petition":

Mr. White's "Petition" was prepared in the first weeks of November 1979. It was mailed to the printer on November 21, 1979; a printed copy of the "Petition" was filed in this Court on December 12, 1979. The undersigned received his own copy of the printed "Petition" on December 13,

1979. Judge Wangelin issued his "Order" and "Memorandum," in No. 79 Misc. 64, on December 6, 1979, but it was not until December 17, 1979, that the Missouri Attorney General's Office received a copy of these documents. Axiomatically, Judge Wangelin's "Order" and "Memorandum" were issued several weeks after Mr. White's "Petition" was mailed to the printer; it was not received by this Office until five days after the "Petition" was filed in this Court. Consequently, Mr. White is filing this "Supplemental Petition" in order to bring to this Court's attention a case which bears directly upon issues involved herein. Specifically, Judge Wangelin's "Order" and "Memorandum" establish not only the maliciousness of Mr. Green's innumerable filings but the injunction supports Mr. White's claim that Mr. Green consciously attempts to avoid the doctrine of res judicata by refiling claims upon which adverse decisions were rendered in the hope and belief that the duplication will be lost somewhere in the five hundred lawsuits. Consequently, Mr. White believes that this Court's Rule 24.5 specifically grants him the opportunity to file this "Supplemental Petition" while both parties' petitions for writs of certiorari are pending; the "Supplemental Petition" is necessary because the attached "Order" and "Memorandum" were not available at the time the printed "Petition" was filed.

As noted, Judge Wangelin barred Mr. Green from filing in either the Eastern or Western Districts of Missouri "any pleading, writ, petition, complaint or motion . . . without prepayment of the requisite filing fee. . . ." Judge Wangelin also enjoined Mr. Green from filing any such documents in any federal court without first including a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action. Judge Wangelin further required that Mr. Green include

in any suit filed in any federal court a statement referring to his Opinion. Judge Wangelin's accompanying "Memorandum" explained the necessity for these "Orders":

> "This matter is before the Court upon the attempted filing of four purported civil rights complaints in forma pauperis by Inmate Green, and upon submission of the Order to Show Cause entered herein directing Inmate Green to show cause why he should not be held in contempt of court, and why he should not be permanently denied the ability to proceed in forma pauperis.
>
> * * *
>
> "The third complaint is entitled *Rev. Clovis Carl Green, Jr., on behalf of himself and all other prisoners similarly situated,* Plaintiffs v. *David Dennis, Mr. Pitzen, Ms. Hufty, Ms. Lee, Major Morgan, Dr. W. H. McCormick, and Carl White, Superintendent, Missouri Training Center for Men,* Defendants. This volunimous [sic] and rambling complaint practically defies analyzation. *However, Inmate Green's claims are apparently in the nature of a denial of his freedom of religious activity; cruel and inhumane living conditions violative of the Eighth Amendment; and the denial of access to the Courts.*
>
> * * *
>
> "With respect to at least the first three complaints, the Court notes that venue is improper in this District under 28 U.S.C. § 1391(b) or (e). However, it is apparent in light of the decisions in *Clovis Carl Green, Jr. v. Donald Camper, et al.,* No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979) why Inmate Green has chosen to renew his litigatory onslaught in this District. Recognizing Inmate Green's unending propensity to file wholly meritless, frivolous and malicious

actions in the Western District, in what the Court termed a 'flagrant abuse of the judicial process' the United States District Court for the Western District of Missouri has taken steps to curtail Inmate Green's avowed purpose to 'preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial functions of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters,' *See Green v. Camper, supra,* slip op. at 3 and 31-38. The Western District has, therefore, ordered that all suits filed by Inmate Green be immediately referred to the United States Magistrate for an initial detemination of maliciousness or frivolousness. In this Court's Opinion, even such minimal consideration places too much faith in Inmate Green's intentions in light of his past actions. Such restrictions will not prevent Inmate Green from carrying forward his intentional abuse of judicial resources. The over 500 frivolous and/or malicious cases filed by Inmate Green are set forth at *Green v. Camper, supra* at 4-29. That number is continuously swelling. Inmate Green has been previously enjoined from acting as 'writ-writer' or 'jailhouse lawyer' for any other inmate incarcerated within the Missouri penal system, or from filing in the United States District Court for the Western District of Missouri any action against the State of Missouri or any of its officials or employees, including the state judiciary, for any alleged cause of action arising out of other inmate's criminal convictions or their resultant confinement. *Green v. Wyrick,* 428 F.Supp. 732, 743-744 (W.D. Mo. 1976). Inmate Green has also been enjoined from filing any further lawsuits concerning the administration and operation of the United States District Court for the Western

District of Missouri, *Green v. United States of America,* No. 76-CV-100-C (W.D. Mo. filed August 23, 1976). Neither injunction has deterred Inmate Green, and his deliberate violations of those injunctions have twice resulted in criminal convictions for contempt of court [citations omitted]. The first two complaints mentioned herein in all likelihood violate the second injunction referred to above, and the third complaint set forth above in all likelihood violates the first injunction mentioned above.

"Inmate Green has also organized a prisoner's law collective whose purpose it is to flood the courts with frivolous suits, and has resorted to threats of violence if his demands are not met. [Citation omitted.] Inmate Green has been found to have practiced fraud upon the court through the filing of false financial affidavits in connection with requests to proceed in forma pauperis. [Citation omitted.]

"However, rather than engage in what would appear to be a meaningless act with respect to Inmate Green's avowed purpose to frustrate the judicial process, given the fact that he has been undeterred by his five month and ten year sentences for criminal contempt of court, this Court has decided to take a different course of action.

"As has been stated by almost every court which has dealt with Inmate Green in the past several years, his abuse of the judicial process is so flagrant that it regularly preempts scarce and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds.

"In addition to the previously cited Opinions of the Western District of Missouri, the state courts have

characterized Inmate Green's filings as 'a calculated abuse of process'. [Citation omitted.]

"The United States Court of Appeals has similarly characterized Inmate Green's filings. [Citation omitted.] In that opinion, the Eighth Circuit ordered that in light of Inmate Green's continued abuse, Inmate Green would no longer be allowed to file writs of mandamus with the Eighth Circuit Court of Appeals, which challenged the regularity of proceedings in district court.

* * *

"One method by which society, through the mechanisms of both legislative and judicial systems, imposes obligations on its individual members, is by setting and demanding adherence to prohibitory standards. Prosecution for criminal conduct and punishment therefore is one of the methods used to manifest, encourage and enforce an individual's obligation to society. *This method has not been effective in impressing upon Inmate Green the concept that the rights of the individual are, in certain contexts, affected by the transcendant needs of the whole.*

"The amount of human and financial resources expended by the state and federal courts who have come within Inmate Green's orbit is a proud but sorrowful display. It is proud in that it manifests extraordinary concern that even the boy who cried wolf hundreds of times too often has nonetheless had his cries underwritten by the United States Government. However, it is sorrowful that others must countenance arrogant maliciousness directed toward impeding an important social institution. *That Inmate Green claims to be the founder of the 'human awareness church' is pitifully*

ironic in light of his callous disregard for the rights of others' access to the Courts.

* * *

"Undeterred by the expense non-pauper parties would have to bear in filing meritless claims, *unafraid of perjuring himself to keep an obviously meritless claim alive, content to violate court orders with impunity despite two convictions for criminal contempt of court, Clovis Carl Green, Jr. has, with the aid of 28 U.S.C. § 1915, continuously engaged in the grossest intentional abuse of the judicial process.*

"To prevent Inmate Green from filing or proceeding in forma pauperis in this or any future case in the Eastern or Western Districts of Missouri may insure that Inmate Green files only those suits which he truly believes are justified. Such action will also force Inmate Green to make the initial judgment required of any potential litigant—is a possible benefit from the subject lawsuit worth the necessary expense? If Inmate Green continues to file frivolous and malicious lawsuits in furtherance of his 'plan' or as a hobby, or to relieve the boredom of prison life, it will now at least become an expensive 'plan' or hobby.

". . . Inmate Green's abuse has been so consistent, flagrant and malicious that it appears to the Court the only viable alternative is to remove Inmate Green's major weapon. To that end, this Court will enter an order pursuant to 28 U.S.C. § 1651(a) directing the clerks of the United States District Courts for the Eastern and Western Districts of Missouri not to accept for filing any writ, petition, complaint or motion for Inmate Green without prepayment of the requisite

filing fee, and to return to Inmate Green any writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. § 1915, with a notation 'applicable filing fee must be paid', and to send to Inmate Green the current schedule of filing fees in the Court; and will further order Inmate Green to verify all pleadings, writs, petitions, complaints or motions ever submitted for filing to a United States District Court; to include in every writ, petition, complaint or motion filed, a list of all causes previously filed on the same, similar or related cause of action; to include in every writ, petition, complaint or motion a stateement referring to this Court's opinion; and to send a copy of every writ, petition, complaint or motion filed in any federal court to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri [Citation omitted.]" [Emphasis added.]

The extreme action taken in the above-quoted case was in response to Mr. Green's conscious and concerted attack not only upon both the state and federal judiciary but upon prison officials in general and Mr. White in particular. The above quote establishes that once again Mr. Green has attempted to litigate the issue of religion vis-a-vis Mr. White and the Missouri Training Center for Men at Moberly, Missouri. It is not enough that Mr. Green has already sued Mr. White three times in regard to so-called religious activities at Moberly; even while the instant case is pending Mr. Green has initiated another lawsuit concerning alleged religious prosecution at Moberly by Mr. White.

The quoted case demonstrates the maliciousness of this case and Mr. Green's intent to harass Mr. White into granting privileges that are not constitutionally mandated.

Why should Mr. Green be placed in a special category simply because he has filed innumerable harassive lawsuits? Why should Mr. Green be allowed to proceed with duplicative actions simply because state and federal attorneys, as well as state and federal judges, are unable to locate all of Mr. Green's previous lawsuits and sort through them in an effort to ascertain if the one presently before them is barred by the doctrine of res judicata? It is time that Mr. White be heard. It is time that Mr. White no longer be brought into court by Mr. Green on issues already decided adversely to the latter.

In accordance with the demonstrated abuse of Mr. Green it is respectfully requested that this Court issue the Writ and reverse the Eighth Circuit's Opinion. If this Court allows the Eighth Circuit's Opinion to stand Mr. Green will be encouraged to continue and redouble his efforts at abuse. If this case proceeds to trial it will mean that where Mr. Green is concerned the doctrine of res judicata does not exist.

It is in light of the foregoing that Mr. White requests that the laws of this country be utilized not only to support every frivolous claim of a state inmate but also to support the right of Mr. White not to be required to litigate the same cause of action repeatedly.

EN FIN, in light of all the foregoing Mr. White respectfully requests that this Court issue the Writ and, on a basis of several lower court decisions, conclude that Mr. Green's gross abuse of the judicial system and demonstrated harassment of Mr. White not be underwritten by the United States Government and that the doctrine of

res judicata be implimented to bring this case and this cause of action to an end.

Respectfully submitted,

JOHN ASHCROFT
Attorney General
MICHAEL H. FINKELSTEIN
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APPENDIX

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

79 Misc. 64

In the Matter of the Suspected Contumacious Conduct of Clovis Carl Green, Jr.

ORDER

(Filed December 6, 1979)

In accordance with the Memorandum of this Court filed this date and incorporated herein,

IT IS HEREBY ORDERED that Inmate Green be and is DENIED leave to proceed in forma pauperis in the consolidated case, *Green v. White, et al.*, No. 79-1331 C (1); and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and Western Districts of Missouri shall not accept for filing any pleading, writ, petition, complaint or motion from Inmate Green without prepayment of the requisite filing fee; and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and Western Districts of Missouri shall return to Inmate Green any pleading, writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. §1915, with the notation "applicable filing fee must be paid"; and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and West-

ern Districts of Missouri forthwith send Inmate Green the current schedule of filing fees; and

IT IS FURTHER ORDERED that Clovis Carl Green, Jr., be and is ENJOINED as follows:

> In any pleading, writ, petition, complaint or motion filed or attempted to be filed in a United States District Court subsequent to service of this Order, you are hereby ordered to verify all pleadings, writs, petitions, complaints or motions; to include in same a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action; to include in same a statement referring to this Court's opinion, and to send a copy of same to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri.

Dated this 6th day of December, 1979.

/s/ H. Kenneth Wangelin
H. Kenneth Wangelin
United States District Judge

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

79 Misc. 64

In the Matter of the Suspected Contumacious
Conduct of Clovis Carl Green, Jr.

MEMORANDUM

(Filed December 6, 1979)

This matter is before the Court upon the attempted filing of four purported civil rights complaints in forma pauperis by Inmate Green, and upon submission of the Order to Show Cause entered herein directing Inmate Green to show cause why he should not be held in contempt of court, and why he should not be permanently denied the ability to proceed in forma pauperis. The first complaint is entitled *Clovis Carl Green, Jr.*, Petitioner v. *The Circuit Court of Cole County and Honorable Elmo B. Hunter, U. S. Magistrate Richard Ralston, Honorable William Becker, Honorable Russell Clark, Honorable John Oliver, and all other Federal Judges and Magistrates, U. S. District Court for the Western District of Missouri,* Respondents. This complaint attempts to set forth two claims, namely, that Inmate Green has been denied access to the United States District Court for the Western District of Missouri in violation of what Inmate Green perceives as his First Amendment right to access to the Courts; and that the Circuit Court of Cole County is denying meaingful and effective access to the Courts to Inmate Green.

The second complaint is entitled *Clovis Carl Green, Jr.*, Plaintiff v. *Carl White, Superintendent, Missouri Training Center for Men and Missouri Board of Probation and Parole and David Blackwell, Director, Missouri Division of Corrections, and Mr. Sifford, Institutional Parole Officer and Donald W. Wyrick, Warden, and Judge Elmo B. Hunter, U. S. Magistrate Richard Ralston, Judge Russell Clark, Judge John Oliver, Judge William Collinson and all other U. S. District Court Judges, U. S. District Court, Kansas City, Missouri,* Defendants. In this case Inmate Green attempts to set forth claims including the failure of defendants Carl White and David Blackwell to provide free postage stamps for poor inmates for legal mail; that he was discriminatorily denied parole by defendants Carl White, David Blackwell, Donald Wyrick and the Missouri Board of Probation and Parole on account of religious prejudice; that §549.261 RSMo (1969) is unconstitutionally vague; that the Parole Board impermissibly considered a felony conviction in denying Inmate Green parole; that the rule violation reports against Inmate Green were unconstitutional; that a parole board cannot consider unconstitutional rule violation reports; and finally, another claim that Judge Hunter violated what Inmate Green perceives as his First Amendment Right to access to the Courts in *Clovis Carl Green, Jr. v. Donald Camper, et al.*, No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979).

The third complaint is entitled *Rev. Clovis Carl Green, Jr., on behalf of himself and all other prisoners similarly situated,* Plaintiffs v. *David Dennis, Mr. Pitzen, Ms. Hufty, Ms. Lee, Major Morgan, Dr. W. H. McCormick, and Carl White, Superintendent, Missouri Training Center for Men,* Defendants. This voluminous and rambling complaint practically defies analyzation. However, Inmate Green's claims are apparently in the nature of a denial of his free-

dom of religious activity; cruel and inhumane living conditions violative of the Eighth Amendment; and a denial of access to the Courts.

The fourth complaint is entitled *Clovis Carl Green, Jr.*, Plaintiff v. *Phillip L. Swihart, Acting Clerk, U. S. District Court for the Eastern District of Missouri,* Defendant, which alleges a violation of meaningful access to the Courts.

Subsequent to the Show Cause Order entered in *In Re the Suspected Contumacious Activity of Clovis Carl Green, Jr.*, 79 Misc. 64 (E.D. Mo. filed Nov. 1, 1979), Inmate Green has sent in two additional civil rights complaints in his own name and one other in another prisoner's name.

With respect to at least the first three complaints, the Court notes that venue is improper in this District under 28 U.S.C. §1391(b) or (e). However, it is apparent in light of the decision in *Clovis Carl Green, Jr. v. Donald Camper, et al.*, No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979) why Inmate Green has chosen to renew his litigatory onslaught in this District. Recognizing Inmate Green's unending propensity to file wholly meritless, frivolous and malicious actions in the Western District, in what the Court termed a "flagrant abuse of the judicial process" the United States District Court for the Western District of Missouri has taken steps to curtail Inmate Green's avowed purpose to "preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters", *See Green v. Camper, supra,* slip op. at 3 and 31-38. The Western District has, therefore, ordered that all suits filed by Inmate Green be immediately referred to a United States Magistrate for an initial determination of maliciousness or frivolousness. In this Court's opinion,

even such minimal consideration places too much faith in Inmate Green's intentions in light of his past actions. Such restrictions will not prevent Inmate Green from carrying forward his intentional abuse of judicial resources. The other five hundred frivolous and/or malicious cases filed by Inmate Green are set forth at *Green v. Camper, supra,* at 4-29. That number is continuously swelling. Inmate Green has been previously enjoined from acting as a "writ-writer" or "jailhouse lawyer" for any other inmate incarcerated within the Missouri penal system, or from filing in the United States District Court for the Western District of Missouri any action against the State of Missouri or any of its officials or employees, including the state judiciary, for any alleged cause of action arising out of other inmates' criminal convictions or their resultant confinement. *Green v. Wyrick,* 428 F.Supp. 732, 743-744 (W.D. Mo. 1976). Inmate Green has also been enjoined from filing any further lawsuits concerning the administration and operation of the United States District Court for the Western District of Missouri. *Green v. United States of America,* No. 76 CV-100-C (W.D. Mo. filed August 23, 1976). Neither injunction has deterred Inmate Green, and his deliberate violations of those injunctions have twice resulted in criminal convictions for contempt of court, *See In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.,* 586 F.2d 1247 (8th Cir. 1978) and *United States v. Clovis Carl Green, Jr.,* criminal action No. 79-04013-01-CR-W-4 (W.D. Mo. 1979). The first two complaints mentioned herein in all likelihood violate the second injunction referred to above, and the third complaint set forth above in all likelihood violates the first injunction mentioned above.

Inmate Green has also organized a prisoner's law collective whose purpose it is to flood the courts with frivolous suits, and has resorted to threats of violence if his demands

are not met. *Green v. Camper, supra.* Inmate Green has been found to have practiced fraud upon the court through the filing of false financial affidavits in connection with requests to proceed in forma pauperis. *Green v. Wyrick, supra.*

However, rather than engage in what would appear to be a meaningless act with respect to Inmate Green's avowed purpose to frustrate the judicial process, given the fact that he has been undeterred by his five month and ten year sentences for criminal contempt of court, this Court has decided to take a different course of action.

As has been stated by almost every court which has dealt with Inmate Green in the past several years, his abuse of the judicial process is so flagrant that it regularly preempts scarce and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds.

In addition to the previously cited opinions of the Western District of Missouri, the state courts have characterized Inmate Green's filings as "a calculated abuse of process". *Clovis Carl Green, Jr. v. State of Missouri,* Civil Action No. 78,2824 (Mo. Cir. Ct., 16th Jud. District filed August 25, 1978).

The United States Court of Appeals has similarly characterized Inmate Green's filings. *In Re Clovis Carl Green, Jr., et al.,* Nos. 79-8075, 79-8078, 79-8079, 79-8081, 79-8089, 79-8091, 79-8092 (8th Cir., filed May 14, 1979). In that opinion, the Eighth Circuit ordered that in light of Inmate Green's continued abuse, Inmate Green would no longer be allowed to file writs of mandamus with the Eighth Circuit Court of Appeals, which challenged the regularity of proceedings in district court.

The courts of this society exist to protect the rights of individuals as well as the rights of society as a whole. The rights and obligations of the individual are not parallel to the rights and obligations of the collective. There is a constant tension between them and the borderline is penumbral. It is often the duty of the judiciary to balance those rights, to insure that the rights of the individual are protected vis-a-vis majoritarian demands, and to insure that society may limit the rights of individuals where such restrictions are fundamental to society's obligation to protect the legitimate rights and needs of the collective.

That the courts are charged with the task is ample proof that they must not be powerless to protect themselves from deliberate activity directed towards substantially impeding implementation of their duty.

One method by which society, through the mechanisms of both the legislative and judicial systems, imposes obligations on its individual members, is by setting forth and demanding adherence to prohibitory standards. Prosecution for criminal conduct and punishment therefore is one of the methods used to manifest, encourage and enforce an individual's obligation to society. This method has not been effective in impressing upon Inmate Green the concept that the rights of the individual are, in certain contexts, affected by the transcendent needs of the whole.

The amount of human and financial resources expended by the state and federal courts who have come within Inmate Green's orbit is a proud yet sorrowful display. It is proud in that it manifests extraordinary concern that even the boy who cried wolf hundreds of times too often has nonetheless had his cries underwritten by the United States Government. However, it is sorrowful that others must countenance arrogant maliciousness directed toward impeding an important societal institution. That

Inmate Green claims to be the founder of the "human awareness church" is pitifully ironic in light of his callous disregard for the rights of others' access to the Courts.

When an impecunious prisoner seeks to vindicate a claim of even doubtful validity, 28 U.S.C. §1915 has served a meaningful purpose to all society. "Civil Rights actions are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." *Johnson v. Avery*, 393 U.S. 483, 485 (1969). *Wolf v. McDonnell*, 418 U.S. 539, 579 (1974). When, however, §1915 is purposely used by a prisoner as a tool to frustrate the judicial function, the section in effect operates to perversely deny or impede those rights to all except those who abuse them, and a court should not sit idly by and allow it.

There can be no doubt that the section can be so used:

> . . . Persons proceeding in forma pauperis are immune from the imposition of costs if they are unsuccessful; and because of their poverty, they are practically immune from later tort actions for "malicious prosecution" or abuse of process. Thus indigents, unlike other litigants, approach the courts in a context where they have nothing to lose and everything to gain. The temptation to file complaints that contain facts which cannot be proven is obviously stronger in such a situation. For convicted prisoners with much idle time and free paper, ink, law books, and mailing privileges the temptation is especially strong. As Justice Rehnquist had noted, "Though [an inmate] may be denied legal relief, he will nonetheless have obtained a short sabbatical in the nearest federal courthouse". *Cruz v. Beto*, 405 U.S. 319, 327, 92 S.Ct. 1079, 1084, 31 L.Ed.2d 263 (1972) (dissenting).

Jones v. Bales, 58 F.R.D. 453, 463 (N.D.Ga. 1972).

With foresight which has proven correct, United States Circuit Judge Donald P. Lay, about three years and several hundred "Green" lawsuits ago, stated: "It is common sense that conscientious recognition of prisoner rights can continue only as long as the process is not abused by the prisoners to the extent that renders it meaningless. We are coming dangerously close to that time." *Green v. Garrott,* No. 76-8184 (8th Cir. November 2, 1976).

Undeterred by the expense non-pauper parties would have to bear in filing meritless claims, unafraid of perjuring himself to keep an obviously meritless claim alive, content to violate court orders with impunity despite two convictions for criminal contempt of court, Clovis Carl Green, Jr. has, with the aid of 28 U.S.C. §1915, continuously engaged in the grossest intentional abuse of the judicial process.

To prevent Inmate Green from filing or proceeding in forma pauperis in this or any future case in the Eastern or Western Districts of Missouri may ensure that Inmate Green files only those suits which he truly believes are justified. Such action will also force Inmate Green to make the initial judgment required of any potential litigant —is the possible benefit from the subject lawsuit worth the necessary expense? If Inmate Green continues to file frivolous and malicious lawsuits in furtherance of his "plan" or as a hobby, or to relieve the boredom of prison life, it will now at least become an expensive "plan" or hobby.

The purpose of §1915 is to provide access to a federal court for those persons economically unable to invoke its protection. There exists serious doubt as to whether Inmate Green is indeed a pauper. *See Green v. Wyrick,* 428 F.Supp. 732, 739, n. 12 (W.D. Mo. 1976). Further, the ability of an indigent to proceed in forma pauperis is a privilege and not a right. *Carter v. Thomas,* 527 F.2d 1332,

1333 (5th Cir. 1976); *Startti v. United States,* 415 F.2d 1115, 1116 (5th Cir. 1969); *Williams v. Field,* 394 F.2d 329, 332 (9th Cir. 1968), *cert. denied,* 393 U.S. 891 (1968); *See also Tyler v. Callahan,* 74 F.R.D. 421, 423 (E.D. Mo. 1977), *aff'd* 573 F.2d 1313 (8th Cir. 1978), *cert. denied,* 436 U.S. 947 (1978); *Ex parte Tyler,* 70 F.R.D. 456, 457 (E.D. Mo. 1976); *Rhodes v. Houston,* 258 F.Supp. 546, 578 (D. Neb. 1966), *aff'd* 418 F.2d 1309 (8th Cir. 1969), *cert. denied* 397 U.S. 1049 (1970). Furthermore, no one, rich or poor, has the right to abuse the judicial process. *Hardwick v. Brinson,* 523 F.2d 798, 800 (5th Cir. 1975); *Ex parte Tyler, supra,* at 457 and cases cited therein.

The right-privilege distinction has been criticized for its use in circumventing constitutional questions. *See van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law,* 81 Harv.L.Rev. 1439 (1968). However, it is the opinion of this Court that even under the substantive principles of constitutional law which may arguably be applicable in denying Inmate Green the ability to proceed in forma pauperis, such action would be justified on the basis of Inmate Green's activities. It might be argued that an order preventing Inmate Green from filing lawsuits in forma pauperis would impact upon his right of access to the courts guaranteed under the Fourteenth Amendment to the United States Constitution.

The right of access to the courts is not explicit in the United States Constitution but had its genesis in the Supreme Court's Opinion in *Ex parte Hull,* 312 U.S. 546 (1941). In that case the Court held invalid a regulation requiring prisoners to submit to the legal investigator of the state parole board "all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals" which prisoners wished to file in court. *Id.* at 548-549. The predominate basis for the holding was the court's re-

fusal to allow a non-judicial officer to determine the merits of a petition for writ of habeas corpus.[1] Succeeding cases have enlarged the right. In *Griffin v. Illinois,* 351 U.S. 12 (1956), the court pursuant to the Due Process and Equal Protection Clauses required the states to provide trial transcripts or suitable substitutes for convicted, indigent defendants on appeal. Therein the concern of the court was assuring adequate appellate review for defendants regardless of their poverty.

In *Burns v. Ohio,* 360 U.S. 252 (1959), the court held that a state may not constitutionally require an indigent defendant in a criminal case to pay a filing fee before permitting him to file a motion for leave to appeal. While at first glance the case might appear to bring §1915 wholly within the purview of the right of access to the courts, the case is clearly concerned with the central core of the right, i.e., review of criminal convictions.

In *Smith v. Bennett,* 365 U.S. 708 (1961) the Court extended *Burns* by holding that when a state grants a right to collateral review it may not deny the right to an indigent simply because of an inability to pay the required filing fee. In *Douglas v. California,* 372 U.S. 353 (1963) the court reversed the conviction of two indigent defendants who had requested the assistance of counsel on appeal and were denied such representation in accordance with a California Rule of Criminal Procedure. The rule provided for discretionary appointment of counsel only after an independent investigation of the record by the appellate court determined that appointment would be helpful to the defendant or the court. Thus, the court held

1. Interestingly, there is no explicit reference to the Fourteenth Amendment in the opinion. The holding was, however, based upon two slightly dissimilar Fourteenth Amendment cases. *Erie R. Co. v. Purdy,* 185 U.S. 148, 152 (1902); *Carter v. Texas,* 177 U.S. 442, 447 (1900).

that the states must pay the costs in support of a defendant's right of appeal regardless its perceived merit. It should be noted that *Douglas* is confined to direct appellate review as of right of criminal convictions. Six years later, in *Johnson v. Avery, supra,* the Court held that unless the state provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, the state may not validly enforce a regulation prohibiting prisoners from providing each other with assistance in preparing petitions to federal courts. It was in *Johnson* that the phrase "access to the courts" was coined within the quote "it is fundamental that access of prisoners to the court for the purpose of presenting their complaints may not be denied or obstructed." *Id.* at 485. It is apparent, however, that the "complaints" referred to in *Johnson* were writs of habeas corpus, as manifested by the court's insistence that "there is no higer duty than to maintain it (the Great Writ) unimpaired". *Id.* at 485. Two years later, in *Younger v. Gilmore,* 404 U.S. 15 (1971), the Court affirmed without opinion the judgment of the United States District Court of the Northern District of California, *Gilmore v. Lynch,* 319 F.Supp. 105 (N.D. Cal. 1970), which required that the state, in the absence of alternatives given to inmates, has an obligation to provide law libraries for prisoners in its custody. This case can be read as the first "break" from the traditional core of the right of access in that use of the law libraries was not exclusively confined to inmates seeking direct or collateral review of criminal convictions, although the district court emphasized the need for an expanded law library in order to file adequate petitions for relief by way of habeas corpus.

Thereafter, in *Wolff v. McDonnell, supra,* the court extended the prisoner's right of access to the courts to encompass civil rights actions under the Civil Rights Act of 1871, 42 U.S.C. §1981, *Id.,* at 577-580. However, it is

important to point out that the court did not suggest that the Constitution required that such actions be heard in the federal courts. See *Bounds v. Smith,* 430 U.S. 817, 833 (1977) (Powell, J., concurring). Nonetheless the holding in *Johnson, supra,* had clearly been extended beyond direct or collateral review of criminal convictions.

One of the holdings in *Procunier v. Martinez,* 416 U.S. 396 (1974) was that a state regulation restricting access to prisoners to members of the bar and licensed private investigators constituted an unjustifiable restriction on the right of access to the courts. *Id.* at 419. Using a balancing test, the court found that the legitimate interests in penal administration furthered by the regulation, even in light of the deference due prison officials in such a matter, were outweighed by the inmates' interests in presenting their claims. Again, the court was concerned with the absence of alternatives available to inmates. The court also stated that the regulation was arbitrary and not the least restrictive alternative available to further the prison administrators' interests in prison security.

In three subsequent decisions, *Ross v. Moffitt,* 417 U.S. 600 (1974); *United States v. MacCollum,* 426 U.S. 317 (1976); and *Stone v. Powell,* 428 U.S. 465 (1976), the Court began to define the boundaries of a prisoner's right of access to the courts. *Ross* held that the right of prisoners to an adequate opportunity to present their claims fairly did not require appointment of counsel to file petitions for discretionary review in state courts or in the federal courts, *Ross, supra,* at 615-617. The court in *MacCollum,* while noting that the basic question was one of adequacy of access to procedures for review of a conviction under *Ross v. Moffitt,* held that in a 28 U.S.C. §2255 proceeding where the defendant had chosen to forego his opportunity for direct appeal with its attendant unconditional free tran-

script, the restrictions imposed by 28 U.S.C. §753 on the availability to an indigent prisoner of a free trial transcript (a certification by the judge that the asserted claim is not frivolous and that the transcript is needed to decide the issue) were offensive neither to the Equal Protection Clause of the Fourteenth Amendment nor the counterpart Equal Protection requirement embodied in the Fifth Amendment. In *Stone* the court held that there was no broad federal constitutional right to collateral attack in federal court of convictions entered by a state court of competent jurisdiction. Finally, there is *Bounds v. Smith, supra.* To a certain extent *Bounds* is a reiteration of the holding in *Younger, supra.* In that case the court found the essential inquiry to be "whether law libraries or other forms of legal assistance are needed to give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Id.* at 825. The decision in *Bounds* did not foreclose alternative means to achieve the goal enunciated in *Younger,* but the court's avowed preference for the alternative of legal service plans is expressed in no uncertain terms. Nonetheless, it is apparent that under *Bounds* the states are not required to provide independent legal advisers for inmates in addition to library facilities.

Insofar as the court can determine, this is the entire background of principal Supreme Court cases dealing with the constitutional right of access to the courts. While it appears to this court that the ability to proceed in forma pauperis is bound-up with the right of access to the courts *where an indigent prisoner is appealing his conviction or collaterally attacking his conviction,* it is doubtful that the ability to proceed in forma pauperis is fundamentally connected with the right of access to the courts in the context of civil rights cases brought by indigent prisoners.

There are two further factors which lend support to this conclusion. No court has ever held that 28 U.S.C. §1915(d) is unconstitutional. Yet, there would be no apparent reason or justification for the provision in §1915(d) sanctioning disparate treatment by allowing the court to dismiss the case if it is satisfied that the action is frivolous or malicious before allowing the litigant to proceed, or at any time thereafter, if the ability to proceed in forma pauperis was inextricably tied to the right of access. Second, the waiver of costs in §1915(a) and (b) is statutory. In *Graham v. Riddle,* 554 F.2d 133 (4th Cir. 1977), the Fourth Circuit, in affirming the district court's order conditioning the plaintiff's right to file complaints in forma pauperis upon "good cause shown" stated:

> It is quite clear that Congress, while intending to extend to poor and meritorious suitors the privilege of having their wrongs redressed without the ordinary burdens of litigation, at the same time intended to safeguard members of the public against an abuse of the privilege by evil-minded persons who might avail themselves of the shield of immunity from costs for the purpose of harassing those with whom they were not in accord, by subjecting them to vexatious and frivolous legal proceedings.

554 F.2d at 134.

While the judiciary, not Congress, is the arbiter of the Constitution, this Court will not lightly imply a constitutional right where none exists under Supreme Court precedent and where Congress has made abundantly clear its intent not to underwrite frivolous or malicious lawsuits.

The Court recognizes that the *Gilmore, Procunier* and *Wolff* holdings extended the right of access to the courts in certain contexts to civil rights cases. Furthermore, the

court is aware of the statement in *Bounds* that "the costs of protecting a constitutional right cannot justify its total denial". It is, however, a quantum jump to wholly equate what has been delineated as the right of access to the courts with an absolute and inalienable right to proceed in forma pauperis under §1915. Nonetheless, this Court will undertake an analysis of the substantive constitutional issues arising from an order preventing Inmate Green from filing lawsuits in forma pauperis.

Despite the above analysis, it might be argued that such an order would impact upon Inmate Green's right of access to the courts. It should, however, be pointed out that besides this court's doubt as to whether a constitutional issue has been raised, there is further doubt even as to Inmate Green's status as a pauper, *Green v. Wyrick, supra.*

The fundamental constitutional rights involved in access to the courts emanate from the due process clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment, made applicable to the federal government by means of "reverse incorporation" through the due process clause of the Fifth Amendment. To justify infringement of the right of access to the courts it would appear that constitutional scrutiny would require a finding that the infringement is necessary to further a compelling federal interest and is the least drastic means available to accomplish such interest.[2] Two other constitutional doctrines might conceivably be involved,[3] but would not appear to alter the

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2. See text accompanying nn. 5, 7, and 8, *infra,* and n. 7, *infra.*

3. This Court does not inevitably attempt to anticipate legal arguments which might conceivably apply to a case sub judice. Because Inmate Green has merely attempted to berate the Court in response to the Order to Show Cause, rather than address the legal issues herein, the Court feels that certain issues must be considered though not raised.

above test. It has been said that the constitutionality of laws (orders)[4] imposing a prior restraint is more suspect than that of laws providing for subsequent punishment. *Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 495 (1952). Thus, Inmate Green has a constitutional right to proceed under §1915 by the section's inclusion in the right of access, a subsequent denial of that right for previous conduct ("publications") could be a prior restraint. Also, to the extent that the order would single out Inmate Green, it could be argued that it created a "suspect" classification within the meaning of the Equal Protection Clause.[5]

The doctrine of prior restraints is almost certainly inapplicable to this case.[6] Nonetheless this Court is of the firm conviction that Inmate Green's activities have brought him within the "exceptional case" language set forth in *Burstyn, supra,* at 504, citing *Near v. Minnesota,* 253 U.S. 697, 716 (1931). The compelling interest this Court has in protecting its ability to administer its own functions, which

4. In their ordinary usage, the First, Fifth and Fourteenth Amendments are limitations which apply to legislative or executive action. In that an injunctive order by a court can have similar impact, analysis of these limitations is deemed necessary by this Court.

5. The Equal Protection Clause of the Fourteenth Amendment applies only to the states and the Fifth Amendment does not contain an Equal Protection Clause. However, the concepts are not mutually exclusive. The Fifth Amendment does forbid discrimination that is so unjustifiable as to be violative of due process, *Schneider v. Rusk,* 377 U.S. 163, 168 (1964). Thus, if the classification would be invalid under the Equal Protection Clause of the Fourteenth Amendment, it could also be inconsistent with the due process requirement of the Fifth Amendment. Cf. *Richardson v. Belcher,* 404 U.S. 78, 81 (1971).

6. The continued filing of frivolous and malicious lawsuits is clearly outside the traditional framework of the doctrine of prior restraints, i.e., the historically conceived liberty of the press. *See Near v. Minnesota,* 283 U.S. 697, 713-716 (1931).

Furthermore, the operation of the order entered herein will not create the "dual punishment" problem associated with prior restraints in that the order barring waiver of fees is directed to the clerk. *See Near, supra,* at 713.

is itself a constitutional interest as evidenced by Article III of the United States Constitution, has been set forth at pages 6 and 7, *supra.* See *Shapiro v. Thompson,* 394 U.S. 618, 634 (1969).[7] Moreover, the order contemplated by this Court appears to be the least drastic alternative available to it. *See Shelton v. Tucker,* 364 U.S. 479, 489-490 (1960). The injunctions entered against Inmate Green and resultant criminal convictions for contempt of court (5 months, 10 years) have failed to deter Inmate Green. As set forth above, the status quo is injurious. Furthermore, it would appear that pursuing further criminal convictions against Inmate Green would be a more drastic alternative with respect to Inmate Green's liberty interests. The order entered by the United States District Court for the Western District of Missouri in *Green v. Camper, supra,* has only resulted in Inmate Green pursuing his litigatory deluge in this Court.

The test for "suspect" classifications appears to be identical and scrutiny thereunder would yield the same result as the "prior restraint" analysis above.[8] Inmate Green's abuse has been so consistent, flagrant and malicious that it appears to this Court the only viable alternative is to remove Inmate Green's major weapon. To that end,

7. It is clear that the above test does not apply to all constitutional limitations. For instance, the substantive tests for determining that certain speech is without First Amendment protection, i.e., clear and present danger, libel, obscenity, fighting words, etc., are divergent from the "compelling state interest" test, *supra,* unless protection from clear and present danger, libel, obscenity, etc., are definitive restatements of valid compelling state interests and unless denying protection to speech is invariably the least drastic alternative. However, as distinguished from First Amendment speech, prior restraints limited by the First Amendment are scrutinized under a test which appears to be similar to the "compelling state interest" test, *supra. See Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 562-570 (1976); *Near v. Minnesota,* 283 U.S. 697, 716 (1931).

8. *See e.g., Graham v. Richardson,* 403 U.S. 365, 375-376 (1971).

this Court will enter an order pursuant to 28 U.S.C. §1651(a) directing the clerks of the United States District Courts for the Eastern and Western District of Missouri not to accept for filing any writ, petition, complaint or motion from Inmate Green without prepayment of the requisite filing fee, and to return to Inmate Green any writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. §1915, with the notation "applicable filing fee must be paid", and to send to Inmate Green the current schedule of filing fees of this Court; and will further order Inmate Green to verify all pleadings, writs, petitions, complaints or motions ever submitted for filing to a United States District Court; to include in every writ, petition, complaint or motion filed, a list of all causes previously filed on the same, similar or related cause of action; to include in every writ, petition, complaint or motion a statement referring to this Court's opinion; and to send a copy of every writ, petition, complaint or motion filed in any federal court to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri, *see Carter v. Telectron, Inc.*, 452 F.Supp. 944, 1003 (S.D. Tex., 1976).

This order does not affect in any way injunctions previously entered against Clovis Carl Green, Jr.

Dated this 6th day of December, 1979.

/s/ H. Kenneth Wangelin
H. Kenneth Wangelin
United States District Judge